Part I: Introduction, Methodology and Theoretical Underpinnings

Chapter I: Introduction

This work is a contribution to the modern study of animal protection theory and practice. It borrows from the disciplines of political studies, philosophy, legal studies, and history to make three distinct yet interrelated contributions to its field. Two of those contributions are theoretical in nature and they are outlined in Parts I and IV. The other contribution, by contrast, is largely an empirical analysis and it is contained in the middle two sections of this thesis – Parts II and III. The substance of these three contributions will be considered in turn.

The first element of this dissertation is an analysis of current thinking in the area of animal protection theory. That discussion, contained in Part I, Chapter III, begins with a review of the moral theory that informs modern animal protection arguments. Consideration is also given to the way legal and political theorists have addressed animal issues. The purpose of opening the thesis with a revision of contemporary ethical and legal thought in relation to animal protection is twofold. The analysis contained in Chapter III serves as a literature review and therefore contextualises the thesis within an overarching school of thought. However, more importantly, the discussion in Chapter III helps establish the theoretical parameters that inform the argument put forward in the final part of this dissertation. In that sense, Parts I and IV are interrelated, even though
they are disrupted by the presence of empirical evidence in Parts II and III. Part I sets the
tone for the final discussion by outlining how liberal-based animal protection theorists
currently conceptualise the ethical, legal, and political principles of animal protection.
Part IV responds to that analysis by proposing a new conceptual animal protection
framework.

Chapter III is more than a literature review or even a precursor to the final discussion. It
demonstrates that although ethicists have developed different models to assert that
animals are deserving of an enhanced moral status, the core theoretical structures
informing those models are in fact very similar. Specifically, in Chapter III it is argued
that modern animal protection theorists have focused their attention on what is termed the
external inconsistency. The external inconsistency is an inconsistency in the way the
interests of animals are protected when viewed in relation to the mechanisms of human
interest protection. It is argued that the most influential philosophies of animal protection
– Peter Singer’s use of utilitarianism, Tom Regan’s use of deontology, and Mark
Rowlands’ use of contractarianism – all use different philosophical pathways to make the
same point: that it is arbitrary to protect humans according to one set of standards, and
animals according to another. All three theorists argue that if the liberal circle of moral
concern can capture all humans, it should also be able to incorporate at least some
nonhuman animals.

In Chapter III, it is further shown that, like their philosophical counterparts, both pro-
animal legal theorists and political studies scholars have sought to deploy arguments in
favour of repudiating the external inconsistency. They have done so by asserting that
humans and animals have a range of comparable capacities that logically suggest that interest protection should be applied to both groups consistently. To give practical expression to that philosophical position, animal advocates have sought legislative reforms that effectively draw those animals with the closest evolutionary proximity to humans into the human moral circle. Animal advocates have experienced some limited success in that pursuit. For example, it is common for animal research laws to protect great apes more stringently than mice.

In Chapter III, it is argued that despite some modest success, especially in relation to securing an enhanced moral status for some nonhuman primates, attempts to break down the external inconsistency have not received widespread support. The assertion persists that there is something special about the human species that sets humans apart from other animals. It is the failure of contemporary moral and legal animal protection theorists to sway the mainstream with their arguments challenging the external inconsistency that has led to the new approach to animal protection described in the final part of this dissertation. The detail of that argument will be considered in a moment.

The second contribution this thesis makes to the field of animal protection is contained in Parts II and III. In those sections, original data is presented that demonstrates a link between an animal’s level of visibility and the structure of animal welfare legislation. This is done to progress thinking in relation to the prevalence of inconsistencies in statutory animal welfare instruments. Parts II and III move the dissertation away from abstract concepts and into the area of empirical analysis, although Part II does contain theoretical analysis. In order to investigate whether there is a link between high visibility
and favourable statutory welfare protection, a number of steps are taken. In Part II a mix of abstract and practical arguments are engaged to establish that animal welfare legislation is inconsistent and how scholars and animal advocates understand that inconsistency. Part II also builds on the work undertaken in Part I, by helping to establish the theoretical basis for the final argument presented at the end of this thesis. This is done by arguing that animal welfare laws are inconsistent in and of themselves, independent of how human interests are protected. Part III is the most empirical section of the thesis. It demonstrates that animals have varying levels of visibility, and analyses animal welfare statutes in light of those visibility levels. The content of each of the chapters that make up Parts II and III are considered below.

In Part II, Chapter IV, it is argued that the persistence of the external inconsistency is, at least in a theoretical sense, due to the unwillingness of orthodox liberal theorists to pay adequate attention to the place nonhuman animals occupy within political society. It is demonstrated that conventional liberal scholarship contends that the world is made up of two types of beings: humans and nonhumans. Accordingly, humans occupy political society and are the subject of political regulation in order to protect their interests via measurable, agreed-upon standards that have the backing of the state’s authority. Animals, by contrast, are cast as natural entities living beyond the reach of political institutions. As such, it is thought that animals are not due strong forms of interest protection, but rather their interests are appropriately protected according to the principle of voluntary benevolence. In Chapter IV, it is argued that the human/nonhuman divide of orthodox liberal thought is a flawed theoretical framework because in practice some animals have been drawn into the human-constructed political system by virtue of their...
economic instrumentality. Such animals are the subject of extensive legislative regulation that means their life chances fluctuate in response to political decisions. They are not natural beings living according to the law of nature. The argument that some animals have been ‘contracted in’ to political society resurfaces in Part IV where it is argued that the explicitly political nature of some animals means that the principles commonly applied in other areas of public policy, within liberal democracies, should also be applied to the management of human/nonhuman relations.

Based on the argument that some animals are part of political society, Figure I depicts how animals are categorised for political purposes.

**Figure I: The Categorisation of Animals for Political Purposes**

![Diagram of categorisation of animals for political purposes](image-url)
Figure I is discussed in more detail in Chapter IV. However, in short, Figure I divides animals between two groups – free-living and captive animals. Captive animals are animals that have been politicised by human agents. They are the subject of this study. The captive animal group is further divided into two subgroups: non-economically productive animals and economically productive animals. The economically productive group is then further separated between animals used for agricultural purposes, those used for entertainment, those used for education and research, and those engaged in law enforcement and other regulatory functions. The groups depicted in Figure I are those analysed in Part III to establish whether a correlation exists between high visibility and strong statutory interest protection.

The reason for dividing the captive group between economically and non-economically productive animals is that current thought in relation to inconsistencies in animal protection arrangements assumes a primary role for economic interests. By focusing on the correlation between visibility and statutory interest protection, rather than the relationship between economic use and statutory interest protection, this thesis considers the phenomenon of animal protection bias from an original perspective. However, this thesis does not wish to diminish the importance of economic factors in informing the life chances of domesticated animals. Indeed, the animal groups outlined in Figure I are based on the animals’ economic instrumentality. Furthermore, an economically based model reflects popular thinking in relation to animal groups and is also indicative of the way animals are incorporated into welfare legislation. The groups established in Figure I permit a critical analysis of the economic arguments used to explain inconsistencies in animal welfare legislation. Those arguments are summarised in Chapter V.
Chapter V blends evidence-based arguments with a theoretical approach to again review contemporary animal protection literature. Unlike Chapter III, which describes the external inconsistency, Chapter V considers another type of inconsistency in the way animal protection laws are constructed. The inconsistency addressed in Chapter V is termed the internal inconsistency. The internal inconsistency is an inconsistency in the mechanisms the state has developed to regulate captive animal use. It functions independently of human protection instruments. The internal inconsistency results in some animals receiving better protection than others before the law. However, importantly, the internal inconsistency is not based on species membership. It is based on an animal’s economic use. For example, it is common for cats kept in the home as companion animals to receive basic legal protections that are not extended to cats used in scientific research. It is because inconsistencies in welfare provisions fluctuate between economically defined animal groups that Figure I is constructed in the way it is.

When theorists discuss inconsistencies in animal welfare laws they are often explained with reference to the concept of ‘necessary suffering.’ Necessary suffering is commonly described as a regulatory principle that states that animals should be protected from harm, except in cases where causing them harm is necessary. For example, beak trimming may be painful, but it is deemed necessary because it protects against cannibalism. Explanations such as this are common to many western animal welfare statutes. Critics of the necessary suffering principle, as it relates to captive animal regulation, tend to argue that the concept of necessary suffering results in animals being protected from harm only when there is no economic interest in causing an animal to suffer. By extension it is
argued that animal welfare legislation tends to favour non-economically productive animals.

This study expands scholarly understanding of inconsistencies in animal welfare law. One of the ways it does so is by asserting that if economically based accounts of animal welfare bias tell the whole story, then one would expect that all non-economically productive animals would be well protected before the law and all economically productive animals would be poorly protected. However, as is shown in Part III of this thesis, there are in fact variations between the strength of animal welfare laws as they pertain to different categories of economically productive animals. That suggests that there is more than economics alone informing the flow of statutory interest protection. In Part III it is argued that the issue of visibility helps account for why different types of animal uses are associated with different levels of legislative protection. Such an argument assumes that both economics and visibility inform the extent to which the state is willing to protect certain animals from harm.

In Chapter VI it is argued that although animal advocates generally support the view that inconsistencies in animal welfare regulations are a reflection of the economic instrumentality animals have been attributed, animal advocates also regularly argue that animal suffering can be explained, at least in part, by its invisibility to most people. By extension, animal advocates assert that if more people were aware of animal suffering they would insist that the state intervene on the behalf of animals.
In Chapter VI, the findings of interviews with active members of the Australian animal protection movement are presented. The interview data demonstrates that it is common for animal advocates to engage both economic- and visibility-based arguments to explain why some animals are not well-protected before the law. Many interviewees argued that companion animals are the group of animals best protected by current animal protection arrangements, while agricultural and research animals are the worst protected.

Furthermore, in Chapter VI it is shown that animal advocates perceive the notion of visibility to be complex. On the one hand, many interviewees believed that weak animal interest protection is associated with both the profit motive and low animal visibility. Yet, at the same time, some of the people interviewed argued that the public only sees what it wishes to see. A number of interviewees claimed that some people seek to remain ignorant about animal cruelty.

Part III of this dissertation rigorously examines whether there is evidence to support a link between high animal visibility and strong statutory protection. In order to test that hypothesis, in Chapter VII each category of animal identified in Figure I, Chapter IV, is systematically examined to establish its comparative level of visibility. That analysis required extensive primary and secondary research and as a result Chapter VII is an expansive chapter. In this chapter, it is argued that animal visibility may be measured according to three standards: direct popular visibility, indirect popular visibility via the mass media, and indirect visibility via the state. Each of those visibility types is factored into the overall analysis. It is concluded that the animals with the highest overall level of visibility, in descending order, are: Exhibited, Sports and Gaming Animals; Companion
Animals; Research and Education Animals; Law Enforcement and Assistance Animals; and Agricultural Animals.

In Chapter VIII, those visibility rankings are measured against the level of interest protection afforded hens, rabbits, horses, and dogs in the state of NSW, Australia, when the animals are engaged in a range of activities associated with each of the categories identified in Figure I. It is found that although a number of exceptions exist, there appears to be a broad pattern of legislative bias that supports the proposition that high visibility is associated with strong statutory protection. Exhibited, Sports and Gaming Animals consistently have the strongest statutory protection, followed by Companion Animals. It is also shown that although the laws protecting Research and Education Animals appear comprehensive, they are only guiding principles and they do not protect animals from harm if justification can be provided to legitimate that harm. That makes them unlike the laws governing Exhibited, Sports and Gaming Animals, and Companion Animals. Agricultural Animals, and Law Enforcement and Assistance Animals, are also afforded low levels of protection. The NSW legislative analysis also demonstrates that dogs are afforded preferential treatment at all times. However, their level of protection rises when they are engaged in high-visibility activities. In sum, of the animals sampled, the most favoured, from a legislative perspective, are dogs performing in circuses. It is argued that preference is shown to dogs in circuses because dogs are a species of animal with which many humans have a close association, and performing in a circus is a high-visibility pursuit. Chapter VIII’s findings suggest that although economic factors are important, visibility does influence the flow of bias in animal welfare arrangements.
Chapter IX builds on the visibility analysis conducted in Chapters VII and VIII. It re-examines the question of whether there is a link between high visibility and strong animal welfare protection, but does so from the perspective of animal welfare laws in Britain in the nineteenth century. The reason early British animal laws are examined is because the highly homogenised nature of the animal industrial complex throughout the western world makes it unlikely that repeating the analysis undertaken in Chapter VIII, in relation to another jurisdiction, would yield markedly different results. Nineteenth-century British laws allow the question of a nexus between high visibility and strong statutory interest protection to be re-examined from the perspective of a different set of variables. In the case of nineteenth-century Britain, animal welfare legislation was philosophically similar to modern animal welfare laws, but the animals with a high level of visibility, and those that were well-protected before the law, were markedly different. If a relationship between visibility and strong statutory interest protection can be demonstrated in two separate cases where the nature of human/nonhuman animal relations are markedly different, that adds weight to the claim that high animal visibility tends to be legislatively beneficial. The contemporary Australian analysis appears first because it is the most relevant to the current situation. The early British analysis follows in order to confirm the findings and ensure the NSW case is not anomalous.

The conclusion reached in Chapter IX is that visibility was a factor that influenced which animals were well-protected before the law in Britain in the nineteenth century. Indeed, in the early British case, visibility appeared to be a more influential factor than economic concerns. The content of animal welfare bills and acts shows a tendency towards initiating welfare protection for high-visibility urban animals. Furthermore, Hansard
records suggest that, in many cases, Members of Parliament sought welfare laws in response to their own first-hand exposure to animal suffering. Although in the nineteenth-century British case it is also possible to identify a number of exceptions that do not support a visibility analysis of animal welfare inconsistencies, the low level of interest protection afforded pit ponies throughout the nineteenth century strongly suggests high visibility was beneficial to animals. Pit ponies carried out precisely the same function as above-ground draught animals, yet they did not receive protection by the state until 89 years after comparable above-ground animals were first protected. That inconsistency is best explained via reference to the concept of animal visibility.

The third contribution to thinking in the field of animal protection studies made in this thesis is found in Part IV. In the final part of this dissertation a new theoretical model of animal protection is proposed. In Chapter X it is asserted that if the argument made in Chapter IV – that the lives of some animals are politicised – is accepted, and if the link between animal welfare legislation inconsistencies and visibility is found to be supported by evidence, than a sufficient basis should have been established upon which to propose an animal protection model that breaks down the internal inconsistency. The reason that challenging the internal inconsistency is the focus of the theory outlined in Chapter X is due to the failure of animal protection scholars to sway the mainstream with their challenge to the external inconsistency. Drawing nonhuman animals into the human moral circle would be likely to result in a significant improvement in the level and type of interest protection available to sentient nonhumans. However, while the popular view remains that, for the purposes of moral theorising, the human and nonhuman cases must be treated separately, an alternative theory of animal protection must be articulated. It is
for that reason that the model proposed in Part IV does not seek to repudiate the external inconsistency but, rather, proposes that the principles applied to other areas of public policy, within the context of liberal democratic states, be applied to the regulation of domestic animal use. By doing so the internal inconsistency would be placed under pressure. Specifically, in Chapter X it is argued that if the fundamental liberal democratic principles of equitable treatment and transparency were applied to statutory animal welfare regulation, it would effectively deconstruct the internal inconsistency, while leaving the external inconsistency intact.

The principles of equitable treatment and transparency are selected as the liberal democratic principles to be applied to animal welfare laws for two reasons. On the one hand they are fundamental principles that underscore liberal democratic political arrangements. They are also notably absent from animal welfare arrangements. Inconsistencies attest to inequalities. Inconsistencies predicated on low visibility signify shortcomings in the area of transparency. In Chapter X it is argued that by applying the principle of equitable treatment to the way the state protects animals from harm, animal welfare laws may be brought into line with other areas of public policy, and the citizenry may engage with the process of establishing community standards for animal care. In practice, the proposed animal protection model would mean that a single standard of animal protection would have to be agreed upon and then applied across the animal industrial complex.

In Chapter X, it is acknowledged that the proposed model, which ties the level of statutory animal protection afforded low-visibility animals to the level of protection
available to high-visibility animals, carries a risk. Even though the evidence presented in this dissertation suggests that public exposure to animal suffering is associated with animals receiving favourable protection from harm, it is nonetheless unclear if an equitable approach to animal protection would result in low-visibility animals receiving stronger levels of interest protection. It may be that if the community was forced to choose between exposure to animal suffering and the benefits generated by that suffering, the consensus view would support the latter and not the former. Despite this, in Chapter X it is argued that it is a risk worth taking because an equitable approach to animal protection is an approach grounded in liberal democratic principles, and even if some animals experience increased suffering as a result, that decision could be challenged according to the normal process of political reform available in liberal democratic political systems.
Chapter II: Methodology

Introduction

The discipline of political science has been slow to take up the challenge of theorising animal protection issues (Garner 1998:1).¹ Some theorising has been undertaken in relation to the animal protection movement as a modern social movement (Garner 1995; Finsen and Finsen 1994; Francione 1996a; Garner 1993; Jasper and Nelkin 1992), animal rights versus the rights of nature (Garner 1997), and animal rights as a political philosophy (Garner 2005a). But despite such work, political theorists have not made a strong contribution to thinking in the field. Most animal protection theorising undertaken by scholars drawn from the humanities has been conducted by individuals working within the disciplines of philosophy and law. The deficit in politically based research about animal protection matters has afforded this study opportunities, but it has also presented challenges. Researching in an underdeveloped area offers the potential to make a broadly based contribution. But it also requires initiative and the ability to utilise an eclectic range of research tools and materials. In practice, it means that this thesis cannot rest upon a single inherited framework. Rather, this dissertation has required a diversity of approaches, theoretical frameworks, and research methods, each tailored to a particular research objective. In this chapter each of the approaches utilised in this dissertation are

¹ Garner argues that if the discipline of political science is defined broadly then it can be argued that it has made a ‘more substantial’ contribution to thinking in the field of animal protection studies. He writes, however, that ‘the issue of animal protection remains a peripheral part of mainstream political science’ (Garner 2002c:391).
considered in turn. But first, the theoretical principles that inform the research objectives are discussed.

Theoretical Framework

This dissertation is a methodologically diverse work. It is also interdisciplinary, borrowing most notably from the disciplines of philosophy, law, and history. Yet there is a significant, consistent, and coherent single theoretical thread running throughout this study which is that it is framed within the liberal democratic political tradition, with an emphasis on the key liberal democratic principles of equality and transparency. There are a number of reasons for grounding this study in liberal democratic political thought. First, liberalism has provided the scholarly underpinnings for the dominant philosophies of animal protection. As political scientist Robert Garner writes:

[I]t is nevertheless the case that the most sustained, and best known, attempts to justify a higher moral status for animals than the moral orthodoxy allows has come from thinkers operating from within this very tradition [liberalism] (Garner 2005a:10).

Utilitarianism, deontology, and contractarianism have provided the philosophical basis for the three most influential schools of animal protection thought. They are also three of the most fundamental and well-developed schools of liberal thought generally. Without the modern liberal principle of human protection, born of the humanitarian stream of
Enlightenment thought, the notion of animal protection would not have been conceptualised. Indeed, the most resilient claims to animal protection utilise liberalism’s protective tools, initially developed to safeguard human interests, by questioning the legitimacy of applying strong interest protection principles to all humans while denying the same to all nonhuman animals.

The second reason for grounding this study in liberal theory is that the legislative analyses undertaken in Chapters VIII and IX are both based on animal protection arrangements that occur within liberal democratic political states. Western animal protection laws operate within a political culture committed to liberal principles. Given those associations, liberalism is a logical prism through which to inspect and critique animal welfare legislation.

Turning to the democratic component of liberal democratic political thought, the democratic element is particularly applicable to an analysis of the role visibility plays in influencing the structure of animal protection laws. Under the conditions of a totalitarian regime, the role of visibility in informing which animals receive statutory protection and which do not would be minimal. Although dictatorships must heed public opinion to some extent or risk serious rebellion, democratic institutions, despite their shortcomings, are far more responsive to the public mood and have developed a range of processes by which popular views may be expressed. Such processes include elections, the formation

---

2 The two studies are animal regulation laws in New South Wales (NSW), Australia, in the early twenty-first century, and animal regulation laws in the United Kingdom (UK) in the nineteenth and early twentieth centuries. In both cases it is reasonable to regard the states as liberal and broadly democratic, although, as discussed in Chapter IX, the term ‘democratic’ is used cautiously in the case of the UK study because early democratic arrangements were significantly different to those common in the twenty-first century.
of political parties, media commentary, protests, lobbying, and petitions. The stimuli to which citizens in a democratic state are exposed are therefore significant in shaping their views, which in turn have an impact on the political decision making process. Furthermore, democratic political arrangements tend to be incompatible with closed decision making processes and unbridled power. Democratic theory therefore lends itself to an analysis of visibility and animal protection arrangements. In the absence of animal visibility, transparency may be compromised. Transparency is a key democratic requirement. When combined, these principles mean that reflecting on animal protection arrangements via reference to liberal democratic principles is both appropriate and useful.

The research methods used to examine the structure of animal protection legislation, within the context of liberal democratic thought and practice, are outlined below. Each method is discussed in the sequential order in which it is utilised in the body of this thesis.

Qualitative Research Methods

Personal interviews with individuals actively involved in the Australian animal protection movement were undertaken for this study. Details of how the interviewees were selected and approached are provided in Chapter VI. Comprehensive information about the types

---

3 In Chapter VI, some interviewees asserted that not only do some animals have a low visibility, but some members of the public choose to actively ignore animal suffering. The issue of selective observation, or choosing to remain unaware of certain issues, is a problem faced by many social movements. It is discussed more fully in Chapter VI.
of organisations the interviewees were drawn from is available in Appendix III. A full list of questions is presented in Appendix II. The interviews were not as highly structured as those used for survey research. Rather, they were ‘intensive interviews’ (Devine 2002:198) or ‘guided conversations’ (Loftland and Loftland cited in Devine 2002:198). Yet the interviews were conducted in a methodical way and interviewees were asked the same questions in the same order, with little variation.

The aim of these interviews was to generate data that would allow for a better understanding of how animal advocates conceptualise inconsistencies in animal protection regulations. Furthermore, I sought to learn whether animal advocates perceive the issue of visibility to be a factor influencing those inconsistencies. Sociologist Fiona Devine defines qualitative research methods as ‘most appropriately employed where the goal of the research is to explore people’s subjective experiences and the meanings they attach to those experiences’ (Devine 2002:199 original emphasis). A myriad of secondary source material generated by animal protection organisations is available which asserts that there is a link between visibility and animal suffering. Some of that material is presented in Chapter VI. Furthermore, my first-hand experience of the animal protection movement suggests that many animal advocates associated with progressive animal protection agencies sincerely believe that if more people were exposed to conditions inside intensive agricultural systems, abattoirs, and animal research laboratories, more people would oppose such facilities. Interviews were therefore undertaken in order to flesh out the detail of that common perception and to clarify the precise nature of that conceptual link. Interviews were also designed to reveal whether advocates placed greater emphasis on visibility in explaining inconsistencies in animal protection arrangements, or
whether economic imperatives were considered more important. Interviews were not undertaken to build a case in favour of certain types of animals having high or low visibility. Rather, the interviews were specifically designed to reveal how active animal advocates understand the issue of bias in animal welfare legislation.

I have a longstanding relationship with a number of animal protection agencies. In addition, I have advised the NSW Government on animal protection matters, most notably in relation to the scientific use of animals. I have also been actively involved in research and education in the field of animal protection for the past five years. My multidimensional association with animal protection has assisted with this study. Most notably, in Chapter VII, I draw upon various ‘participant-as-observer’ (Gold cited in Punch 1998:189) roles I have engaged in over the last seven years. Those roles include my experience as:

- An animal protection advocate – I am a financial member of a broad range of animal protection organisations including, but not limited to, the NSW RSPCA, Animal Liberation NSW and the US-based Society & Animals Institute. I receive membership literature from those organisations and I also receive a range of free email updates from other animal protection organisations around the world (limited to English language communiqués). That exposure has allowed me to develop a comprehensive understanding of the issues that concern animal protection organisations across the spectrum of the animal protection continuum⁴ and has further provided an insight into how various animal protection agencies perceive themselves and their functions. Furthermore, I have

---

⁴ What is meant by the phrase ‘animal protection continuum’ is explained in Chapter VI.
been an active member of Animal Liberation NSW for seven years. That involvement has allowed me to closely observe animal advocates at work. I regularly attend Animal Liberation NSW public meetings and at times I am privy to its board’s deliberations. Furthermore, I occasionally attend ‘actions’, including protests, information stalls, and ‘direct actions’ including farm inspections and Open Rescues. My role at actions is limited to that of observer. However, at times I am called upon to write articles, press releases, and information flyers for various animal protection agencies and I am occasionally asked to speak to the media on behalf of Animal Liberation NSW or World League for Protection of Animals (WLPA).

- A professional employed by an animal protection agency – I was employed as WLPA’s office manager for a period of 18 months. During that time I was consistently privy to the workings of the organisation’s board. I was also directly exposed to the demands placed upon animal protection organisations by the public via phone enquiries, letters, and emails. Furthermore, I had the opportunity to observe the organisation’s management interacting with other animal protection agencies, various levels of government, and elected representatives. As the WLPA’s only full-time employee, I was directly involved at all levels of the organisation.

- A member of the NSW Animal Research Review Panel (ARRP) – ARRP is a statutory body empowered to oversee animal research in NSW. I was a member of the ARRP for three years. In that time I undertook 20 days of inspections. I inspected and reported on research and education facilities of all sizes and types. I met with researchers to discuss their work and I spent considerable time observing, and talking to, government-employed animal welfare inspectors, institutional animal welfare officers, and members of animal ethics committees. I also met with the full Animal Research Review Panel on six occasions annually. As ARRP is comprised of 12 individuals representing various

---

5 The term ‘Open Rescue’ is defined in Chapter VI.
stakeholder groups, I was exposed to the views and ideologies of a diverse range of interest groups.

- Animals in Research Representative for Animals Australia (AA) – Via my association with AA I have had the opportunity to observe and directly participate in an animal protection organisation’s decision making processes and campaign development. As the Animals in Research representative I have also had the opportunity to engage in the debate over animals in research by identifying key advocacy areas. Since AA is an umbrella organisation it engages in a limited amount of campaign work. Its primary role is to provide progressive animal protection organisations with a single voice when making representation to industry and government.

- An educator in the field of animal protection – Since commencing my doctoral research I have developed a range of lectures addressing different aspects of the animal protection debate. Lectures are delivered on an annual or biannual basis to students from a range of disciplines. Of particular relevance to this study are the biannual lectures I present to animal research and agricultural students. In order to undertake research involving live animals at the University of Sydney, postgraduate students must attend a two-day induction program. Included in that program is a two-hour lecture which I deliver in conjunction with an animal protection specialist from the University of Sydney’s Discipline of Philosophy. A significant proportion of that lecture is dedicated to answering questions and debating students, all of whom will use animals as part of their education. Such lectures have afforded me an important insight into the practice of animal research.

---

6 The NSW Animal Research Review Panel is made up of two representatives from the NSW Animal Societies Federation; two representatives from the NSW RSPCA; three representatives from the Vice-Chancellors’ Conference; one pharmaceutical industry representative; one representative from the NSW National Parks and Wildlife Service; one representative from the NSW Department of Education; one representative from the Department of Fisheries; and one representative from the NSW Department of Primary Industries.
Although on some accounts the data generated by participant observation is ‘soft data’ (Marsh and Furlong 2002:23), the visibility analysis in Chapter VII was aided by my first-hand exposure to some sections of the animal industrial complex. My participant observation status was particularly beneficial to the discussion of intensive agriculture and the scientific use of animals. Furthermore, my links to the animal protection movement and the animal protection bureaucracy also assisted in securing interviews with senior animal advocates for Chapter VI. Although my association with the animal protection bureaucracy, and advocacy community, may be viewed as compromising the integrity of the interviews to some extent, the wide variations in responses offered by those interviewed suggests they offered sincere responses, and did not tailor their answers to suit me.

Primary Research

In Chapter VII, I assess the visibility levels of different types of animals. Evidence utilised in that section comes from a range of sources, including my first-hand knowledge of the animal industrial complex, and secondary source material including books, journal articles, and information generated both by stakeholders and animal advocates. In addition to the use of secondary source material, I also undertook primary research for this dissertation. In 2004 I visited Australia’s largest agricultural show. I did so in order to form an opinion as to how the agricultural processes on display at that show contribute
to animal visibility. During my visit I obtained and retained a copy of all free information flyers available. I systematically visited all operational animal exhibits. I made notes at each. I also took 49 photographs of animals and their enclosures. The photos were taken of animals or enclosures I considered significant, and the purpose in taking them was to allow for closer scrutiny, as a reminder to me, and as a permanent record. I took photos of bulls, cows, calves, hens, roosters, chicks, turkeys, ducks, goats, sheep (pre- and post-shearing), lambs, rams, horses, ponies, pigs, and piglets. The findings from that research are presented in Chapter VII.

I also undertook primary research to assist in the analysis presented in Chapter IX. In that chapter I seek to comment on the extent to which animal visibility informed the flow of interest protection afforded animals in nineteenth-century Britain. An analysis of animal protection bills and acts from that period, plus secondary commentary, all suggest a tendency towards statutory protection for high-visibility animals. However, none of the secondary information available provides an adequate insight into the thinking of the legislators who enacted animal welfare laws in Britain at that time. I wished to discover whether parliamentary debates from that period revealed why some animals were targeted for protection and not others. In order to learn more about this matter I travelled to London where I undertook primary research at Westminster Archive Library. Using the library’s resources, a comprehensive list of successful and failed animal protection bills from 1800 until 1911 was amassed. That list is available as Appendix I. Furthermore, while at Westminster, parliamentary debates on proposed animal protection statutes recorded in Hansard were located and analysed. Those records are not available in Australia and therefore required research be undertaken in the UK. The debates recorded
in Hansard have allowed me to better form an opinion as to whether visibility influenced the inconsistent application of statutory protection to animals at the time animal welfare legislation was first created. Those findings are presented in Chapter IX.

Media Analysis

In Chapter VII it is argued that one of the ways animals may be visible to the general public is via the mass media. Given that, in order to form a picture of which animals are discussed in the media and the nature of that reporting, a month-long media analysis was undertaken for this study. For the month of May 2004, four widely circulated Sydney newspapers were monitored for animal-related stories. The four papers surveyed were The Sydney Morning Herald, which is a broadsheet; The Daily Telegraph, which is a tabloid; and Sydney’s two Sunday papers, The Sun-Herald and The Sunday Telegraph. All four papers are urban-based publications. For the sake of manageability, only select sections of the papers were included in this research. Details of which sections were included and the results are available as Appendix IV. The results are also presented throughout Chapter VII.

Legislative Analysis

The legislative analysis undertaken in Chapter VIII is focused on current animal protection regulatory arrangements in contemporary NSW, Australia. It was undertaken
by analysing key NSW animal protection statutes and their accompanying regulations and codes of practice. Which statutes were analysed and an explanation of my choices is presented in Chapter VIII.

In an early draft of this thesis the entire legislative analysis undertaken for Chapter VIII was included as an appendix. A matrix was created for each type of animal use, and the relevant section of the act, code or regulation was noted against the welfare criteria outlined in Chapter VIII. However, the entire appendix ran for 115 pages. Given that, and the repetitive nature of the many of the regulations, only one matrix is provided in Appendix V. It is for the first animal analysed and it is provided to illustrate the analysis process undertaken for each animal activity identified in Chapter VIII.

Australia has a federal political system. Federal power is formally limited to a small number of key areas outlined in Section 51 of the Australian Constitution.\(^7\) Residual matters not directly addressed in that Section fall to the various states and territories which make up the Commonwealth of Australia. As regulation of animal use and/or animal protection is not identified in Section 51, legislation in that area has normally been the domain of states and territories (Radich et al. 2005:6). However, the Australian

\(^7\) A significant proportion of the Commonwealth Government’s power over matters not formally allocated it in the Australian Constitution are derived from its powers under Section 51 (xxix) of the Constitution. That section empowers the federal government in relation to foreign affairs. Such power has been deemed constitutional by the High Court because of the Commonwealth Government’s role as signatory to international treaties. However, international regulation of animal welfare have been slow to develop and the only international treaties Australia is signatory to which include nonhuman animals in their terms of reference are conservation-orientated (Radich et al. 2005:6). This means that federal regulation of animal protection is formally limited under the Australian Constitution. However, at the time of writing a National Animal Welfare Bill, introduced into the Australian Senate as a private member’s bill, is under review by the Senate Rural and Regional Affairs and Transport Legislation Committee (Parliament of Australia 2005). If the bill passes through both houses of parliament it will signify a shift towards a more explicitly unitary animal welfare policy in Australia. However, it is unlikely the bill will be successful.
The federal government has been directly involved in animal welfare regulation since 1989 when the National Consultative Committee on Animal Welfare (NACCAW) was established. NACCAW, among other duties, develops and reviews model codes of practice (Department of Agriculture, Fisheries and Forestry 2005), some of which are embedded in state law. Furthermore, the federal government has recently assumed even greater responsibility for animal welfare through the establishment of the Australian Animal Welfare Strategy (AAWS) in 2004, and a complementary federal animal welfare bureaucratic structure, under the auspice of the federal Department of Agriculture, Fisheries and Forestry. However, federal influence over animal welfare remains limited and there is therefore no one piece of Australian animal protection legislation.

Consistency in animal protection provisions between states that make up the Commonwealth of Australia is strong. This is in part due to the development of national model codes of practice, and because of the Primary Industries Ministerial Council (PIMC) which meets twice annually. The PIMC is made up of representatives from the Australian federal government, all states and territories, and appropriate New Zealand bodies. The PIMC identifies consistency as a key organisational charter (Primary Industries Ministerial Council 2005). However, because of Australia’s federal political system, an analysis of animal protection laws in Australia requires an analysis of the

---

8 The federal government is constitutionally responsible for issues pertaining to the importation and exportation of nonhuman animals only.

9 In 2005, animal protection organisation Voiceless wrote a submission to the Commonwealth Government which stated that: ‘[G]enerally speaking, while there are many common themes in Australia’s animal welfare legislation, an examination of the multitude of the laws of each State and Territory reveals a notable lack of uniformity’ (Voiceless 2005c:7). However, as the authors of that report went on to argue, the philosophical underpinnings, and aims, of Australia’s animal protection laws are broadly consistent as is the nature of the statutes’ biases (Voiceless 2005c:9). The ‘lack of uniformity’ is found in the detail. It is my contention that there is sufficient consistency between animal protection arrangements throughout Australia that the NSW legislative framework can reasonably be viewed as representative of modern animal welfare arrangements.
regulatory arrangements in a single Australian jurisdiction, including federal instruments also active in that state. In this instance NSW has been selected. Such a focus is expedient to the extent that I reside in NSW and I am familiar with the NSW animal welfare framework. It is, however, also appropriate to adopt such a focus as NSW is the most populous state in Australia and animal industries in that state represent the entire range of animal uses under consideration in this thesis.

Lawyer and Deputy Chair of the NSW Young Lawyers Animals Rights Committee, Stephanie Abbott, stated in an interview conducted for this study that regulation pertaining to animal protection is embedded in a host of legal instruments and can therefore be difficult to identify. She notes:

> In Australia you can find animal – the statutes affecting animals – buried in amongst obscure customs regulation, through to gaming, sports and recreation, in primary industry, criminal law, tort law … it’s very difficult to be across it all.

The legislative examination undertaken in Chapter VIII is not intended to be an exhaustive analysis capturing every animal protection clause embedded in all NSW or Australian federal law. Rather, emphasis has been placed on the three most significant animal use statutes – the NSW Prevention of Cruelty to Animals Act 1979, the NSW Animal Research Act 1985, and the NSW Exhibited, Sports and Gaming Protection Act 1986 – and their associated codes and regulations. The purpose of the legislative analysis is to examine the content of the statutes cited above and reach a conclusion as to whether there is a visibility relationship between the animals who are favoured and those who are
not. As many hundreds of laws impact on animals it would be impractical to consider every law pertaining to animals. Furthermore, it would also be unnecessary to do so. An analysis of a sample of the three primary animal protection instruments active in NSW, each created specifically for the purpose of protecting the welfare of animals, is sufficient to draw conclusions concerning the relationship between visibility and statutory interest protection.

*Quantitative Research Method*

An anonymous two-page survey was also undertaken for this dissertation. Relevant survey results are discussed in Chapter X. A copy of the survey is available as Appendix VI, and full statistical results are outlined in Appendix VII. The survey was designed to reveal something about the relationship between exposure to the use of animals in research and education, and attitudes towards that type of animal use. The survey combined closed questions where participants were asked to rank their attitudes from ‘very strong’ to ‘I know nothing about the issue,’ and open sections where participants were invited to expand on their thoughts. For the sake of manageability only the results of the closed questions are provided in Appendix VII. The open question results are not relevant to this study. A series of multiple-choice questions designed to test respondents’ knowledge levels were also included. The survey data was analysed using SPSS analytical software.
The survey was carried out by seeking anonymous responses from four sample groups. Group One was made up of animal researchers. They were surveyed on the second afternoon of a two-day compulsory induction program to allow them to use animals in research at an Australian university. The animal research group was the only group that received the survey in this way. All other sample groups received the survey as part of a regular newsletter or magazine mail-out. The methodological difference between Group One and the other sample groups is regrettable. However, I was unable to arrange to distribute the survey among animal researchers in any other way. The majority of the members of Group One were early-level researchers, with only 25 per cent having already completed a postgraduate degree. The total number surveyed from the animal research sample group was 89.

Group Two consisted of individuals involved in providing support services to animal researchers, including animal house technicians and managers; 73.9 per cent of animal support service providers recorded having a postgraduate degree, suggesting they had previously been engaged in animal research themselves and had since moved into the field of support services. Surveys were distributed to the group via their professional organisation’s newsletter. Participants were required to meet the cost of postage to return the survey. The total number of surveys returned was 23. That represents 13.5 per cent of surveys distributed.¹⁰

¹⁰ Returns from animal research support service personnel were disappointing low. The low return rate could indicate staff do not read the publication the survey was distributed through. It may also suggest staff were too busy to prioritise participating in a survey. It may also suggest that staff were suspicious about the survey’s purpose and did not feel it was in their interest to participate. The low response rate was such that analysis might have been aided by combining the data from the animal research group and the support services group. However, in order to gain permission to distribute the survey to animal research support staff through their professional magazine, a commitment was made that the group would be identified as
The Group Three sample was derived by surveying members of an animal welfare organisation. The organisation is classified as a moderate, or new welfare, organisation, according to the schema outlined in Chapter VI. The survey was distributed to its members via the organisation’s biannual magazine. Participants were required to meet the cost of postage to return the survey. There was a 23.5 per cent return rate from this group. The total number of surveys returned was 261.

Group Four was made up of members of a specialist anti-animal research organisation. The organisation may be classified as an animal rights organisation. The survey was distributed to the organisation’s members via their regular newsletter. Participants were required to meet the cost of postage to return the survey. There was a 41.5 per cent return rate from this group. The total number of surveys returned was 209.

Terminology

Every effort is made to deploy language in a precise manner and avoid careless use of contested terms. To that end, the term ‘animal protection movement’ is used to capture the range of views that constitute the movement. Dominant thinking in the field suggests the animal protection movement is made up of people who subscribe to one of the three philosophical positions – old welfarism, new welfarism, and animal rights. Where those support services and not researchers. In order to honour that commitment, the two sets of data could not be combined.
terms are used in this study they are employed to specifically mean animal rights or new/old welfarism according to the scholarly definition of those terms. The term ‘animal rights’ is not used in its popular sense. What is meant by animal rights in its popular sense is discussed in Chapter VI.

Efforts are also made to avoid use of the term ‘animal welfare’ as a stand-alone expression as it is highly contested. Its contested nature is due to the fact that one may claim to be in support of animal welfare, yet simultaneously be complicit in some form of animal cruelty due to the nature of the animal industrial complex. At the same time the expression ‘animal welfare’ is often used by governments in naming statutes, many of which permit forms of animal use which critics claim result in animal suffering. Furthermore, both scientists and animal use professionals tend to take a reductionist approach to the concept of animal welfare, meaning that an animal’s ability to remain economically productive is often cited as evidence of good welfare (Garner 2005b:108). For example, the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes defines animal welfare as:

an animal’s quality of life based on an assessment of an animal’s physical and psychological state as an indication of how the animal is coping with the ongoing situation as well as a judgement about how the animal feels. (National Health and Medical Research Council 2004:3).
The ‘ongoing situation’ means the extent to which the animal is able to remain alive and does not revert to abnormal behaviour\(^{11}\) while being held captive and also undergoing scientific procedures. Indeed, as Duncan and Fraser note:

\[\text{welfare seen as satisfactory biological functioning involves longevity, reproductive success, absence of disease or injury, high growth rate, and normal functioning of the immune and adrenal system. The definition of welfare as synonymous with productivity is one favoured by farmers (Duncan and Fraser cited in Pope 1999:3).}\]

By contrast, animal protection advocates tend to place greater emphasis on welfare as assessed in relation to an animal’s quality of life. A quality of life approach to animal welfare is likely to damn intensive agriculture because animals are unable to engage in a range of instinctive behaviours, such as foraging and nesting. The conflicting sense in which the term ‘animal welfare’ is employed has resulted in the expression being difficult to meaningfully deploy. Indeed, Garner defines animal welfare as the philosophical notion that ‘humans are entitled to inflict suffering on animals (including but not exclusively pain) if a substantial human benefit accrues’ (Garner 2005b:72). Such a definition is at odds with industry, statutory, and judicial interpretations.

The term ‘advocate’ is used throughout this study to refer to people who actively seek to challenge the orthodox human/animal relationship and/or seek to protect animals from harm. The word is used to express an active relationship as oppose to a passive shared belief in the common principle of animal welfare – the moral orthodoxy. The term

\(^{11}\) Abnormal behaviour may include such things as over-grooming, bar-biting, aggression towards cage mates, and stereotypical behaviour.
‘animal protection’ is also used at times to describe the state-sponsored mechanisms put in place to regulate animal use. On this issue a number of terms are used interchangeably. At times any one of the following may be employed:

- animal protection legislation/statute/law/regulation/instrument
- animal welfare legislation/statute/law/regulation/instrument
- animal use legislation/statute/law/regulation/instrument.

All three are used to refer to laws that stipulate how animals may or may not be treated. The term animal welfare legislation is the most popular expression currently in use, however, that term is not relied upon solely because the extent to which animal welfare legislation is intended to, or does, protect the welfare of animals is contentious.

Finally, it is common practice among progressive animal protection advocates to replace commonly used words with expressions which they consider offer a more apt description of a particular animal use phenomenon. For example, ‘meat’ may be referred to as ‘carcass,’ and ‘slaughter’ as ‘murder.’ This study does not break with conventional language use to express common animal use phenomena. The term ‘nonhuman animal’ is employed at times; however, for ease of reading it is also used interchangeably with the word ‘animal.’ However, the term ‘it’ or ‘that’ is not used to refer to an animal or animals. Rather, specific gender is used where it is known; in cases where it is not, the pronouns ‘he/she’ or ‘they’ are used.
Before proceeding, a final point must be made concerning the challenges inherent in identifying causality in the social sciences. This thesis seeks to better understand how an animal’s level of visibility is translated into statutory interest protection, yet as social policy theorist Ian Dey writes:

> Inference of causation from concurrence remains a problem, despite the methods of agreement and difference. There are no cast iron grounds on which to make such causal inferences. The problems are especially severe where typically causes are multiple (many different factors can produce the same effect) or conjunctural (several causes combine to produce the same effect) (Dey 1999:169).

Despite best intentions, this study cannot escape the problem described above. In this thesis it is argued that animal protection legislation is inconsistent. That is not controversial. However, developing a theory which explains which animals are better protected and why is challenging and vulnerable to contestation. In the first instance, although it is suggested that the theory presented here can be broadly extrapolated to animal welfare arrangements throughout the developed world, the detail of animal welfare statutes does vary between states. Furthermore, the strength of the animal protection movement, and animal use sector, also varies between regions as do patterns of animal use and the importance of animals to specific economies. Additionally, in order to achieve the contrast in animal use industries required for this study, animal welfare legislation from the early modern period and the current epoch are examined. Although it
is argued that the philosophical underpinnings informing the legislative approach to animal welfare were developed early in the nineteenth century and have remained remarkably consistent into the present era, clearly a great deal has changed in the last 200 years, including community attitudes and the process by which policy is developed.

In this study it is argued that the relationship between an animal’s level of visibility and the provision of welfare protection is a ‘causal condition,’ that is, one which ‘lead[s] to the occurrence or development of a phenomenon’ (Strauss and Corbin, cited in Dey 1999:155). However, as Dey notes, ‘any particular consequence can usually be attributed only to a specific configuration of conditions’ (Dey 1999:159). That appears to be the case in the area of animal welfare legislation. For example, as noted in Chapter IV, it has not always been self-evident that animals are an appropriate subject for legislative intervention. There is something particular about modernity that has resulted in certain forms of human/nonhuman interaction – which may have been considered normal or appropriate in pre-modern times – being cast as cruel. Furthermore, visibility cannot be said to be a sufficient condition for strong interest protection. According to Dey, ‘[A] condition is sufficient if only it need be present for a certain outcome to occur’ (Dey 1999:160). In the case of animal welfare policy and animal visibility it is not possible to draw such a strong conclusion. Not all high-visibility animals will receive strong interest protection and not all low-visibility animals will receive weak interest protection under all circumstances, not least of all because of the large number of variants at play. Rather, by taking a long view of animal welfare arrangements from the time of the first national animal welfare statute until the present day, this study suggests that there is a tendency towards strong interest protection for highly visible animals. Yet that tendency is
contingent on a range of other factors, the most important being the economic benefit associated with not protecting an animal’s welfare. This means that high visibility is likely to be a necessary – but unlikely to be a sufficient – condition for strong statutory interest protection.

Despite the challenges presented by the inherently difficult nature of identifying causality where multiple factors are at play, a study of this nature is nonetheless valuable. Choosing to shy away from broadly based hypothesising because of the complex nature of causality, or because findings are contestable, would be disappointing from the perspective of the social sciences generally, and animal protection theorising specifically. The arguments outlined in this dissertation seek to strengthen current thought on animal protection statutory arrangements by offering a more nuanced account of why some animals are favoured over others. This work also critiques the appropriateness of such a bias. If critical appraisal of this work supports the key findings, then this research will have significant implications for animal protection theorists, animal protection advocates, animal use industries, and the state. It will confirm the view held by many animal advocates that animal use industries benefit from undertaking their business beyond popular observation. It would also suggest that animal advocates may be able to aid their cause by persisting in their efforts to make policymakers, and the community, aware of how low-visibility animals live and die. Finally, if equality and transparency are valued as principles worth protecting because they enhance western political culture, then this study raises important questions about the effectiveness with which liberal democratic principles are currently being applied to animal protection policy.
Chapter III: The External Inconsistency: Equality and the Principle of Animal Protection

Introduction

Central to the argument presented in this dissertation is the claim that animal protection arrangements are inconsistent in two different ways. Those two types of inconsistencies have been termed the ‘external inconsistency’ and ‘internal inconsistency.’ The external inconsistency is the inconsistency which animal protection theorists, writing since the current wave of interest in animal protection issues developed in the mid-1970s, have most commonly addressed. The external inconsistency is an inconsistency which occurs as a result of a range of ideological and institutional mechanisms which act to ensure that the manner in which human interests are protected is different in significant ways to the manner in which animal interests are protected. In practical terms, the external inconsistency is enacted by such practices as affording animals weaker legal protection than is available to humans, or by allowing benefit to humans to be an accepted legal defence against animal cruelty. Pounds kill thousands of animals annually if not

---

12 Parts of this section have been published in O’Sullivan (2007).
13 Garner distinguishes between ‘early moral philosophizing’ by scholars such as Singer and Regan, and ‘the so-called “second wave” of thinking about the moral status of animals’ (Garner 2002c:397). This study does not make that distinction. Rather, current thinking on animal protection issues is understood as capturing the work of theorists from the 1970s until the present day.
14 Legal theorist Cass R. Sunstein argues that if rights are understood as a legal protection against harm, then –contrary to the claims made by some animal protection theorists – many animals already have rights by virtue of animal welfare legislation (Sunstein 2003:389). The debate here however, is not over whether animals currently possess legal rights or not. Rather, the point is that whatever protection animals are afforded takes a weaker form than that which safeguards human interests.
15 Pounds are animal shelters where lost or unwanted animals are housed before either being re-homed or humanely killed.
claimed by their owner. Orphanages do not do the same. Research laboratories injure and kill animals in order to establish whether a compound is safe for human consumption. Human research subjects are not treated in the same way. Zoos hold animals captive their entire lives in order to entertain humans. The human equivalent – whereby indigenous people from conquered lands were abducted, transported to the mother country, and exhibited in freak shows – has long since fallen into disrepute. Slow greyhounds and racehorses are killed. Failed Olympians are not. All such practices attest to the external inconsistency.

The external inconsistency is the result of a strict species-based division between human animals, on the one hand, and nonhuman animals on the other. The human/animal divide is fundamental to mainstream western philosophical, political, and legal thought and according to the moral orthodoxy the interests of those on the human side are conceptualised in significantly different ways to the interests of those on the nonhuman side. The external inconsistency is problematic for animals because the protective mechanisms employed to safeguard the interests of humans are based on the quantifiable principles of equality and justice, whereas the protective mechanisms upon which animals must rely are more abstract concepts such as the notions of humanity, benevolence, and compassion. The disjuncture between justice-based protective

---

16 Political theorist Kennan Ferguson argues that it is not normally considered acceptable to reduce the human homeless population by killing people seeking refuge in shelters, even though this is considered an appropriate response to unwanted free-living (feral) cats and dogs (Ferguson 2004:386). However, he goes on to argue that there are some similarities between programs intended to reduce free-living animal populations by desexing (neutering) and government programs intended to ‘control and minimize the reproductive capacities of “drug addicts” and “welfare recipients”’ (Ferguson 2004:394). That point is contentious and there is little evidence to suggest that in contemporary societies the state actively seeks to minimise the reproductive capacity of such people.
principles for humans, and charity-based protective principles for animals, results in humans receiving considerably stronger interest protection than is afforded animals.

By contrast, the internal inconsistency is an inconsistency which takes place within liberal democratic political institutions that have developed to regulate animal use. The internal inconsistency is not an inconsistency which exists between humans and animals. Rather, the internal inconsistency is an irregularity in the manner in which animals are protected in relation to other animals. Conceptualising, describing, and analysing the internal inconsistency is a key element of this study. A discussion of the problematic nature of the internal inconsistency is a central feature of Chapter V. Demonstrating the relationship between the internal inconsistency and animal visibility is the key task of Chapters VII, VIII and IX.

In this chapter the focus is on the external inconsistency, the purpose of which is to demonstrate that the way liberal-orientated animal protection theorists have conceptualised the issue of animal protection over the last 30 years has been based upon the assertion that, as a matter of logic, equal moral consideration should be assigned (some) animals in relation to humans. The emphasis on the external inconsistency – that is, equal consideration for animals in relation to humans – has resulted in animal

---

17 It would be disingenuous to suggest that the stream of intellectual thought this thesis is seeking to contribute to is not a continuation of an older philosophical tradition. Indeed, the current wave of interest in animal protection is directly linked to discourse concerning the appropriate human/animal relationship that has taken place since the dawn of the Enlightenment. That stream of thought is itself associated with other older philosophical traditions such as Buddhism and Pythagoreanism. Yet, regardless of the intellectual origins, this study seeks to contribute to the current wave of scholarly animal protection thought. That wave began in the 1970s.
advocates, working within the liberal tradition, conceptualising the issue of animal protection in the following way:

Position One – Humans use one set of criteria to advocate for themselves and another to advocate for animals.

Position Two – Such an approach is morally problematic because it perceives species membership to be an appropriate basis for moral consideration.

Position Three – Given that, animal advocates should seek to demonstrate that whatever privilege humans receive, at least some animals are deserving of the same.

Depending on the specific school of moral thought to which a particular theorist subscribes, that privilege could take the form of rights, inclusion in a justice-based contract, or equal consideration when assessing utilities. Philosopher David DeGrazia defines such approaches to animal protection as a ‘claim [that] entail[s] that whenever a human and animal have a comparable interest, we should regard the animal’s interest and the human’s interest as equally morally important’ (DeGrazia 2002:19). Philosopher Angus Taylor argues that ‘Animal-liberationists… are all those who consider many non-human animals to be members of the moral community’ (Taylor 1999:15 original emphasis). Environmental philosopher Dale Jamieson argues that ‘[a]nimal liberationists typically accept the project of traditional western ethics, then go on to argue that in their application they have arbitrarily and inconsistently excluded nonhuman animals’ (Jamieson 1998:44), and philosopher Mary Midgley described such arguments as ‘the first large-scale attempt to extend liberal concepts to the borders of sentience’ (Midgley 1983:65).
The terminology employed to describe this style of moral theorising varies between theorists. British political scientist Robert Garner speaks of ‘equal consideration of interests’ (Garner 2005b:18), whereas Australian philosopher Peter Singer employs the term ‘principle of equality’ (Singer 1980:328). Yet regardless of the language used, the concept remains the same – where comparable harms occur to comparable beings, comparable moral principles should be applied regardless of species membership.

External inconsistency theories of animal protection have three central component parts:

1. **Part One** – They critique inconsistencies between the level and type of interest protection afforded humans in relation to animals.
2. **Part Two** – They do so within the context of the dominant political/moral ideology – namely, liberalism.  
3. **Part Three** – They identify the process of breaking down the human/animal divide as key to addressing the problem of animal suffering.

The reason for emphasising animal protection theories that rely on the liberal principle of equality is that the concept of equality is a key concept in moral philosophy generally.

---

18 Philosopher Paola Cavalieri argues that ‘The principles of equality can thus be translated into the principles of equal consideration of interests’ (Cavalieri 2001:6).

19 There are a number of accomplished animal protection theorists who have conceptualised animal protection in opposition to dominant liberal principles; for example, see Adams (1990), Linzey (1976), Noske (1997) and Nibert (2002). Such approaches to animal protection will not be considered here as this study is specifically concerned with liberal-based animal protection theories.

20 The animals considered eligible for equal consideration in relation to humans vary between theorists. However, as a general principle, the case in favour of human/animal equality is strongest when the animal is of a higher order (an adult mammal, for example), and weakest when the animal’s level of sentience or cognitive capacity is contentious (an oyster, for example).
Equality also lies at the heart of the western legal tradition and Westminster-derived political systems. Furthermore, equitable treatment is one of the fundamental principles underscoring both the liberal and the democratic strains of political philosophical thought. The concept of equality is also integral to current popular models of animal protection theorising, and the new theory of animal protection proposed in the final chapter of this dissertation.

The purpose of the remainder of this chapter is to outline the three most influential liberal-based animal protection theories – Peter Singer’s use of utilitarianism, Tom Regan’s use of deontology, and Mark Rowlands’ use of contractarianism – in order to highlight their reliance on the concept of the external inconsistency.21 Each will be discussed in turn. Following that, consideration is given to the manner in which theorists from legal and political disciplines have conceptualised and critiqued the external inconsistency. Finally, the moral orthodoxy’s approach to animal protection is examined.

By describing and critiquing the most popular theories of animal protection in this chapter, the stage is set for the discussion that takes place in Chapter X. There it is argued

21 Although many thousands of books and journal articles have been written on animal protection issues (Singer 2003), the theories put forward by Singer, Regan and Rowlands are emphasised here. The decision to develop the argument in this way is not intended to marginalise other contributions. However, given space constraints, an introduction to the work of these three theorists is sufficient to show how three of the most important schools of liberal moral thought have been adapted for the purposes of protecting animals. Furthermore, the primary purpose of this section is not to delay discussion by providing the reader with a comprehensive literature review. The aim is to demonstrate the manner in which liberal-based animal protection theorists have addressed the external inconsistency. That task is adequately achieved by surveying the work of Singer, Regan and Rowlands. Such an approach is also consistent with the tack taken by Garner in The Political Theory of Animal Rights (2005). Furthermore, it is also important to remind the reader that this dissertation is not a work of moral philosophy. Rather, in order to demonstrate how modern animal protection issues have been conceptualised to date, it is necessary to say something about how moral philosophers have addressed the issue. However, this thesis is not intended to, nor can it, offer a highly nuanced account of moral philosophy as it pertains to nonhuman animals. For such an account, see, for example, Taylor (1999) and DeGrazia (2002).
that if animal protection theorists are unable to convince the mainstream that the external inconsistency is problematic, then a new theory of animal protection is needed.

**Utilitarianism**

The utilitarian tradition has its intellectual roots in Enlightenment thought and utilitarianism has been one of the dominant moral frameworks employed by western philosophers for the last three centuries. Influential utilitarians for the eighteenth and nineteenth centuries such as Jeremy Bentham (1748–1832) and John Stuart Mill (1806–731873) were well-known animal advocates. Both argued that the way humans treat animals is a matter that should rightfully be regulated by the state and not left to the dictates of the individual’s conscience. Both men viewed the suffering of animals as a moral issue. In Bentham’s case, he explicitly equated moral concern for the wellbeing of animals with the ability animals have to suffer (Bentham 1970:283n). The utilitarian world view sits comfortably with an analysis of animal wellbeing predicated on sentience. Indeed, writing some 200 years later, the father of the modern animal protection movement, utilitarian philosopher Peter Singer, argued:

> When we apply utilitarianism to the issue of how we should treat animals, one vital point stands out immediately. Utilitarianism, in its classical form, aims at minimizing pain and maximizing pleasure. Many nonhuman animals can experience pain and pleasure…

---

22 For example, see Bentham (1970) and Mill (1965).
Therefore they are morally significant entities. They have moral standing. In this respect they are like humans and unlike rocks (Singer 1980:328).

In his seminal work *Animal Liberation* (1975), Singer expressly likens his theory of animal protection to already well-established human-centric liberation movements such as the struggle over women’s liberation (cited in Singer 2003), and argues that animal liberation should be the next step in the evolution of human moral sensibilities (Taylor 1999:12). Singer asserts that if it is true that discrimination based on race or sex is morally unacceptable, then as a matter of logic, arbitrary discrimination predicated on species difference must also be wrong (Singer 1995:3). Richard Ryder formulated the view that ‘species alone is not a valid criterion for cruel discrimination’ (1989:6), a form of discrimination termed ‘speciesism’. Moral opposition to speciesism lay at the heart of the argument outlined in the first chapter of *Animal Liberation*. Singer titled that chapter ‘All Animals are Equal…’ and in it he argued that:

> If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering – insofar as rough comparisons can be made – of any other being (Singer 1995:8).

Writing in 2003, Singer asked: ‘If species is not morally important in itself, is there something else that happens to coincide with the human species, on the basis of which we can justify the inferior consideration we give to nonhuman animals?’ (Singer 2003) In Singer’s view the answer is ‘no.’
However, when Singer argued that all animals are equal he did not mean to suggest that all nonhuman animals are equal to all other nonhuman animals. Rather, Singer explicitly sought to deploy utilitarian principles to demonstrate that whatever moral concern is owed human animals, (some) nonhuman animals are owed the same.\footnote{Singer originally suggested that the sentience line should be drawn ‘somewhere between a shrimp and an oyster’, but in the second edition of \textit{Animal Liberation} he indicated that he is uncertain as to whether that is an appropriate cut-off point (Taylor 1999:69).} That is, Singer sought to address the external inconsistency – the inconsistency in the manner in which human interests are safeguarded in relation to animals. In Singer’s opinion, it is morally wrong to view the suffering experienced by humans as more significant, from a moral perspective, than the comparable suffering of sentient nonhumans (Taylor 1999:12).

However, Singer’s theory did not lead him to conclude that humans and animals should be treated in the same way (Taylor 1999:12). Rather, Singer wrote that ‘[t]he basic principle of equality does not require equal or identical \textit{treatment}, it requires equal \textit{consideration}’ (Singer 1995:2 original emphasis). Singer did not suggest that pigs should be given the vote or dogs licences to drive. Instead, the implication of Singer’s theory is that when humans assess the moral legitimacy of an action they seek to undertake that will impact on the life of a nonhuman animal, the pleasure or pain the animal will experience as a result of that action should be seriously assessed. Dismissing the animal’s interests on the basis that they are nonhuman is not appropriate because sentience is not limited to species membership: ‘where animals and humans have similar interests… those
interests are to be counted equally, with no automatic discount just because one of the beings is not human’ (Singer 1985:9).  

Deontology

Many moral philosophers have rejected the claims made by Peter Singer in *Animal Liberation.* However, not all those who have found fault with Singer’s theorising have done so out of a desire to defend the status quo. Philosopher Tom Regan responded to Singer’s moral theory of animal protection by arguing that ‘shorn of appeals to the rights of animals, Singer fails to justify the obligation to be vegetarian or to treat animals in a more humane manner’ (Regan 1980:308). Regan agrees with Singer’s conclusions, however he questions the reliability of employing a utilitarian framework to arrive at them (Regan 1980). According to Regan:

\[ \text{[T]he equality we find in utilitarianism, however, is not the sort an advocate of animal or human rights should have in mind. Utilitarianism has no room for the equal rights of different individuals because it has no room for their equal inherent value or worth} \]

\[ \text{(Regan 1989:109).} \]

\[ \text{24 Regan argues that Singer moves between a position which at times applies the principles of equality to interests and sometimes applies the same principles to treatment (Regan 1980:312). However, for the purposes of this discussion that difference is not significant.} \]

\[ \text{25 For example, see Frey (1980), Carruthers (1992) and Leahy (1991).} \]

\[ \text{26 Mark Rowlands agrees with Regan to the extent that he argues that utilitarianism is the wrong moral framework to employ for the purpose of developing a rigorous philosophical defence of animals. Rowlands writes ‘[t]he strength of utilitarianism, as a moral theory, is that it frequently, so to speak, gets the right answer. Its weakness is that is does so for the wrong reasons’ (Rowlands 1998:82). However, Rowlands also rejects the moral framework employed by Regan (Rowlands 1998:87).} \]
Regan’s objection to the use of utilitarian principles to challenge the external inconsistency has led him to develop an alternative model of animal protection, based on the concept of protective rights for animals. That theory was outlined in *The Case for Animal Rights* (1983). Regan’s argument can be broken up into three component parts:

**Position One:**

Some nonhuman animals resemble normal humans in morally relevant ways. In particular, they bring the mystery of a unified psychological presence to the world. Like us, they possess a variety of sensory, cognitive, conative and volitional capacities. They see and hear, believe and desire, remember and anticipate, plan and intend... These and a host of their psychological states and dispositions collectively help define the mental life and relative well-being of those (in my terminology) subjects-of-a-life we know better as raccoons and rabbits, beavers and bison, chipmunks and chimpanzees, you and I (Regan 2004a:xvi).

**Position Two:**

Now, both human and nonhuman subjects-of-a-life, in my view, have a basic moral right to respectful treatment (Regan 2004a:xvii).

**Position Three:**

The basic moral right to respectful treatment places strict limits on how subjects-of-a-life may be treated. Individuals who possess this right are never to be treated as if they exist...
as resources for others; in particular, harms intentionally done to any one subject cannot be justified by aggregating benefit derived by others (Regan 2004a:xvii).

Like Singer, Regan seeks to demonstrate that the interest protection based on ethical principles that is commonly employed to protect humans from harm – in this case the concept of rights – can (and should) be applied to (some) nonhuman animals. Like Singer, he seeks to extend the limits of strong moral concern beyond the human species in order to capture some nonhuman animals. Finally, as with Singer, the equality Regan seeks to demonstrate is not equality between different types of animals. For example, he was not arguing for equal consideration between a cow and a bear. The implications of Regan’s moral argument do result in an assumption of equality of moral concern between cows and bears, yet his purpose in arguing that ‘[A]ll who have inherent value have it equally, whether they be human animals or not’ (Regan 1989:112 original emphasis) is to challenge the persistence of the external inconsistency. That is, Regan developed the concept of animal rights to convince others that, when assessing the moral concern humans owe nonhumans, that assessment should be made on a similar basis to the way in which human moral issues are addressed – by the application of protective rights predicated on the concept of inherent value regardless of an individual’s species or utility.

---

27 Regan does not claim to know where the line between those who are a subject-of-a-life and those who are not should be drawn. However, he argues that wherever it is drawn it must include ‘mentally normal mammals of a year or more’ (cited in Regan 2004a:xvi).
In asserting the need to challenge the problematic manner in which the interests of animals are protected in relation to humans, Regan is not only critical of Singer’s use of utilitarianism, he is equally dismissive of moral theories developed according to contractarian principles. Regan argues that contractarianism is a weak basis upon which to assert the moral rights of any marginal case, particularly protective principles for nonhuman animals (Regan 2004b). However, Regan is also sceptical about the capacity of contractarianism to protect the interests of able humans (Regan 1989:107). Yet despite such criticism, moral theorist Mark Rowlands has effectively employed contractarian principles to advocate in favour of animals. This is despite Rowlands himself acknowledging that in the minds of many philosophers ‘contractarianism is the moral theory least likely to justify the assigning of direct moral status to non-human animals’ because it is assumed that contractarian approaches are predicated on an agent’s rationality, and nonhuman animals are assumed not to be rational (Rowlands 1997:235). Yet Rowlands dismisses that assumption as ill-conceived. He asserts that ‘contractarianism, properly understood, provides the most satisfactory theoretical basis for the attribution of moral rights to non-humans and non-rational individuals’ (Rowlands 1998:3).

Although Rowlands’ theory has received less popular attention than Singer’s use of utilitarianism and Regan’s use of deontology, it is worth considering for three reasons. First, Rowlands seeks to apply the strong protective tools used to safeguard the interests of humans to some nonhuman animals. By doing so he provides another example of a
liberal-based theorist addressing the external inconsistency. Second, contractarianism is an important school of liberal moral thought, and its application to animals is therefore worthy of examination. Finally, Rowlands’ work is underpinned by John Rawls’ moral theorising and is therefore deserving of consideration because of the substantial influence Rawls has had on liberal thought, and because the manner in which Rawls conceptualises the place animals occupy in the world is significant to later discussion.

According to Rowlands, either contractarian principles can protect the interests of all humans, including marginal cases, and therefore as a matter of logic must also be able to protect the interests of some nonhuman animals (or face a charge of speciesism); or contractarianism only protects fully functional humans and therefore is not capable of protecting the moral interests of marginal cases or animals. Rowlands finds in favour of the first proposition and argues that:

[T]here is nothing in contractarianism per se that requires the contract be restricted to rational agents. The fact that the framers of the contract must be conceived of as rational agents does not entail that the recipients of the contract, that is, the individuals protected by the principles or morality embodied in the contract, must be rational agents… If a contractarian position is consistently applied, the recipients of protection offered by the contract must include not only rational, but also non-rational, agents (Rowlands 1997:236 original emphasis).

Singer’s use of utilitarianism relies on the claim that both humans and nonhumans are sentient, meaning that utilitarian principles apply to both because utilitarianism is
concerned with maximising happiness, and all sentient beings are capable of experiencing pleasure and pain. Regan’s use of deontology relies on the claim that humans and animals share a range of capacities which means they are both deserving of moral rights and therefore neither should be treated as a means to someone else’s ends. Rowlands argues that if marginal humans are protected by the terms of the contract that rational humans agree to on their behalf, then the principles of moral concern which are applied equally to all humans should also be applied to (some) animals. As Rowlands points out, the outcomes generated by the three arguments are not substantially different, but the manner in which they are arrived at is:

[T]he central argument of this book is that once we understand the content, or meaning, of the claim that all human beings should be accorded equal consideration and respect, then we will also understand that this principle of equal consideration must be extended beyond the circle of human beings. And my disagreements with other authors… stems not from any disagreement about this general framework, but, rather, from a disagreement about what they consider to be the basis of the claim that all human beings should be treated with equal consideration and respect (Rowlands 1998:31-32).

According to Rowlands, the ‘basis of the claim’ should be contractarian principles, and specifically focuses his efforts on expanding the terms of Rawls’ ‘original position.’ Rowlands argues that just as human abilities and individual characteristics are hidden behind the veil of ignorance, so too should rationality be similarly hidden. If that principle is accepted it allows for the possibility that the contracting parties could be
marginal humans or animals (Garner 2003:6). As Garner points out, if contractarians are to insist on rationality as a basis for moral consideration, then:

If we are to remain consistent we must treat marginal humans as morally inferior to normal humans, and, equally, we ought to grant an equivalent moral status to marginal humans and the many animals with levels of autonomy broadly the same as them. If, therefore, we are prepared to inflict suffering on animals, to experiment on them and eat them and so forth, we should be prepared to treat marginal humans in the same way (Garner 2003:7).

As the mainstream does not accept the view that is it morally appropriate to use marginal humans as research tools, as a matter of logic it must also be unacceptable to use an animal with comparable capacities in the same way – unless it can be shown that species membership is a morally significant categorisation. Peter Singer argues that a robust philosophical argument in defence of speciesism has yet to be developed (Singer 2003).28

Legal Theorists and the External Inconsistency

Modern animal protection theorising began with the work of moral philosophers in the 1970s. Sociologists James Jasper and Dorothy Nelkin argue that ‘philosophers served as midwives of the animal rights movement in the late 1970s’ (cited in Singer 2003).  

28 In 2003 Singer stated that the ‘only arguments I’ve come across that looks like a defence of speciesism itself is the claim that just as parents have a special obligation to care for their own children in preference to the children of strangers, so we have a special obligation to other members of our species in preference to members of other species.’ However, Singer argues that such a line of argument allows for the possibility that racist action may be morally justifiable on the same grounds (Singer 2003).
However, the debate over animals and the level or type of moral consideration they
deserve has not been limited to a debate between moral philosophers. The legal fraternity
has also made a strong and persistent contribution to thinking on animal issues. Its level
of contribution has been second only to that of ethicists. In this section consideration is
given to dominant patterns in legal theorising about animal protection. This section is not
intended as a comprehensive literature review of legal thought on animal protection.
Rather, as with the preceding discussion, only some theorists are considered. Again, the
purpose is to demonstrate that legal theorising on animal issues has also focused on
critiquing the external inconsistency.

Pro-animal legal theorists have tended to emphasise the way the law conceives of animals
as legal objects, while simultaneously deeming humans (and some other entities such as
corporations) to be legal subjects. At law, animals are property items (Favre 2000). By
contrast, humans are property owners. Legal critics have argued that this human/animal
division is arbitrary, illogical, and harmful. Garner asserts that ‘[t]here is a consensus
among animal law scholars… that abolishing the [property] legal status of animals will
open the door to an animal rights Garden of Eden’ (Garner 2002a:78).

One of the reasons the subject/object division is thought harmful to animals is that, at
law, the interests of subjects are always considered more significant then the interests of
objects. American legal theorist Gary L. Francione writes:

29 It is worth noting that in the same article Garner suggests that the reason animal protection legal theorists
wish to repudiate the property status currently attributed nonhuman animals by western legal systems is that
such an action is a ‘necessary step towards the achievement of an animal rights agenda whereby animals
are regarded as the moral equals to humans’ (Garner 2002a:78). Such an analysis is consistent with the
claim made here: that legal theorising concerning animal issues has tended to focus its energy on
addressing the external inconsistency.
The property status of animals renders completely meaningless any balancing that is supposedly required under the humane treatment principle or animal welfare laws, because what we really balance are the interests of property owners against the interests of their animal property… such a balance will rarely, if ever, tip in the animal’s favour (Francione 2000:xxv).

The object/subject division is also considered problematic because it renders animals devoid of legal standing, making it difficult to bring legal proceedings against a human, on behalf of an animal (Garner 2002a:83).³⁰

Francione has been the most strident critic of western property law as it impacts on animals. He has argued extensively that western legal systems are ‘culprits in facilitating the exploitation of nonhumans’ (Francione 1996b). Francione claims that the relegation of animals to the status of property items denies them justice and is grounded in the flawed notion that nonhuman animals are deficient in comparison to humans (Francione 1996b). Francione asserts that the law applies one standard to humans, which results in strong interest protection, and another to animals, which results in weak interest protection. That is, the western legal tradition is predicated upon the notion of a human/animal divide. Although Francione’s critique of the external inconsistency has

³⁰Sunstein argues that animals do currently lack legal standing in western countries such as the United States of America. However, he asserts that the cause of this is that Congress has not acted to legislate to that effect. Furthermore, he argues that there is no structural obstacle to the creation of legal standing for nonhuman animals given sufficient political will (Sunstein 2004). Garner concurs with Sunstein’s view and argues that it is feasible that, given sufficient political will, anti-animal cruelty legislation could ‘trump’ property rights (Garner 2002a:83). That view is also shared by veterinarian and animal ethics specialist Jerrold Tannenbaum (cited in Garner 2002a).
been developed with reference to the judiciary, his diagnosis and proposed solution are strikingly similar to those reached by prominent animal protection philosophers:

If we want to take animal interests seriously and give content to our professed rejection of the infliction of unnecessary suffering on them, we can do so in only one way: by applying the principles of equal consideration, or the rule that we must treat likes alike, to animals… It means only that if humans and animals do have similar interests, we must treat that interest in the same way unless there is a good reason for not doing so (Francione 2000:xxv–xxvi original emphasis). 31

A similar line of argument has been adopted by other legal theorists. For example, animal protection legal practitioner Steven M. Wise argues that:

The overarching principles of traditional western law – fairness, liberty and equality, and integrity in judicial decision-making – demand that dignity-rights be extended to all qualified to receive them, irrespective of their species (Wise 1998:796).

Wise defines dignity-rights as the right to ‘bodily integrity and bodily liberty’ rightfully due all ‘qualified nonhuman animals’ (Wise 1998:797). Wise further argues that:

[O]nly a radical speciesist could accept a baby girl who lacks consciousness, sentience, even a brain, as having legal rights just because she’s human, yet the thinkingest,

31 Francione based his claim to human/animal equality on the sentience of both species (Francione 2000:xxvi).
talkingest, feelingest apes have no rights at all, just because they’re not human (Wise 2002:238).

In sum, Steven Wise believes animals with comparable capacities to humans should be afforded legal protection on a comparable basis.

*Political Theorists, Political Change, and the External Inconsistency*

Theorists working within the discipline of political science have been slow to turn their attention to animal issues. Garner writes that:

> Given the obvious political saliency of the animals issue it is surprising then that the human/animal relationship has been virtually ignored by the political studies community. In particular, the absence of a comprehensive account of the potential implications for political theory of granting to animals an elevated moral status is an important blind spot in the discipline (Garner 2005a:2).

Garner’s analysis of the deficient nature for the contribution political theorists have made to the animal debate is well-founded. However, the small amount of writing on animal issues generated by theorists working within the discipline of political science, and writing from the perspective of a liberal paradigm, has also tended to address the external inconsistency. In doing so, political scientists have also sought to demonstrate that
whatever consideration is afforded all humans, at least some animals are deserving of the same.

Writing in 1997, Australian political scientists Robert E. Goodin, Carole Pateman, and Roy Pateman asked: given that the concept of sovereignty has changed in significant ways since the mid-1980s, can changes in the way in which sovereignty is conceptualised be applied to great apes as well (Goodin et al. 1997:822-823)? They concluded:

> Who can now claim sovereign prerogatives, then, and what they can credibly claim under that heading are no longer nearly as clear as they used to be. ‘Sovereignty’ is being deconstructed at the same time that the number of states is increasing and state boundaries eroded. In addition, the controversy over the relation between the meaning of ‘human’ and ‘ape’ has been rejoined. This allows a new opening for other, different, kinds of claims and claimants to the status of ‘sovereigns’ in international society (Goodin et al. 1997:830).

The authors go on to argue, under the heading ‘Apes as Our Moral Equals,’ that great apes have a complex social order; the classification of humans and apes into different biological family groups is arbitrary and not well supported by genetic evidence; apes can effectively use language; and all this provides sufficient grounds upon which to challenge the entrenched nature of the ‘species barrier’ (Goodin et al. 1997:831-832). According to the authors, the logical extension of that conclusion is that great apes meet the criteria required for sovereignty, meaning the possibility exists for ‘an internationally protected, autonomous territory for simian sovereignty’ (Goodin et al. 1997:831). Goodin, Pateman,
and Pateman’s conceptualisation of simian sovereignty is an example of political theorists following in the footsteps of moral philosophers by demonstrating that the allocation of strong interest protection, in this case in the form of sovereignty, to humans only, at the expense of comparable others, is arbitrary and unjust. The authors write: ‘[o]ur focus is on the political proposition that the great apes can and should be incorporated into the international society on a similar basis to human communities’ (Goodin et al. 1997:837). Simian Sovereignty therefore offers an example of political theorists tackling the problem of the external inconsistency.

Goodin, Pateman, and Pateman were writing in response to the Declaration on Great Apes (hereafter the Declaration) which, in their view, is a decree of independence born of the same tradition as the American Declaration of Independence and the United Nations Universal Declaration on Human Rights (Goodin et al. 1997:833). The Declaration was made within the context of the Great Ape Project (GAP), which was conceptualised and developed by Peter Singer and Paola Cavalieri. GAP gives pragmatic expression to the view that an appropriate way to deal with bias against animals is to demonstrate that some animals are like humans in morally relevant ways, and on that basis should be afforded protection according to human protective principles. Great apes are a good choice as the first nonhuman animal to try and push into the human moral/legal circle because of their biological proximity to humans.\footnote{Ethologists Lesley J. Rogers and Gisela Kaplan argue that the practice of protecting those animals who resemble humans most closely, as occurs in the case of animal research policy, for example, is unscientific because the capacities of animals are not easily translated into recognisable human capabilities. They write: ‘It would be pointless to attempt to devise a battery of tests that might attempt to measure the equivalent of IQ in humans and to apply the same test, even with slight modifications, to different species because species vary so much in their senses, their ways of processing information, and so on… it is important to recognize that each species is adapted to its particular environmental habitat, or niche, and each one} GAP employs the catch phrase
‘Equality Beyond Humanity’ and ‘demand(s) the extension of the community of equals to include all great apes: human beings, chimpanzees, bonobos, gorillas and orang-utans’ (Great Ape Project nd).

The idea that there is something morally deserving about nonhuman primates due to their evolutionary proximity to humans has been given pragmatic political expression in Australia, in the area of animal research regulation. The Australia Code of Practice for the Care and Use of Animals for Scientific Purposes 7th Edition (2004) (hereafter the Code) states that ‘[s]pecial ethical and welfare concerns arise in the use of non-human primates for scientific purposes. Investigators must take particular care to demonstrate that predicted outcomes justify the use of these species’ (National Health and Medical Research Council 2004:32). Although the NHMRC’s primate policy does not prohibit the use of non-human primates in research, including painful or terminal procedures, the special status primates are attributed by the Code, and the primate policy, are examples of political actors responding to pressure from those who perceive a strict human/animal division to be arbitrary and/or morally problematic – at least to the extent that it categorically excludes some higher order animals from the human moral circle. The political application of the GAP has been taken a step further in New Zealand where, in 1999, parliament amended its animal welfare laws so as to ‘virtually’ prohibit the use of chimpanzees, bonobos (pygmy chimps), gorillas, and orangutans in research (Oogjes nd). Similarly, in 2006 the Austrian parliament placed a prohibition on the use of great apes in research where the research is not in the interest of the species, and in the United

performs intelligently, or “cleverly,” in its own niche’ (Rogers and Kaplan 2004:178). Rogers and Kaplan’s view stands in opposition to the popular view and is at odds with the way influential moral and legal theorists have sought to draw some nonhuman animals into the human moral circle.
Kingdom the Home Office will not grant research licences for primate research (Humane Society of the United States 2006a:1–2). Furthermore, in 2006 the Spanish parliament considered a proposal to grant legal rights to chimpanzees, bonobos, gorillas, and orangutans. The Spanish resolution is also based on the work of the GAP (Guardian Weekly 2006:22).

_The Moral Orthodoxy_

However, despite some success in drawing certain nonhuman primates into the human moral circle, the majority has not embraced the general proposition that nonhuman animals should be allocated interest protection on a comparable basis to humans. Although most people would be likely to agree that animals have interests, and the way they are treated is a moral issue of some sort, most would also be likely to reject the notion that moral consideration of animals should take place on par with moral concern for humans (Garner 2005a:3 and Garner 2005b:16). For example, philosopher Robert Nozick argued, in response to Tom Regan’s theory of animal rights, that if Regan is correct in his assertion that, if ‘enfeebled’ humans are owed rights, then so too are some higher order animals, such a world view ‘can only result in society’s treating severely retarded people like animals, not the other way around’ (Nozick 1997:306-307).

---

33 In the UK primates are attributed special protection under the _Animals (Scientific Procedures) Act 1986_ (Home Office 2004:6). However, the use of primates in research is not illegal. Rather, the Home Office has concluded that the suffering inflicted on such animals cannot be justified. The head of the UK National Health Research Councils, however, has urged the Home Office to remain open-minded about the possibility that research of a sufficiently important nature may arise that could justify the use of primates (BBC News 2006).

34 At the time of writing the outcome of those deliberations was unknown.
Likewise, Martha C. Nussbaum, who has sought to deploy capabilities theory in defence of animals, argues that:

\[
\text{[I]t seems (seems) that we should not equate the suffering of animals with the suffering of human being, lest we lose our moral footing utterly… Throughout history it has seemed important in morals and politics to say that there is something special about the human species – its capacity for moral judgment, its possession of reason – that generates ethical, political, and legal obligations unlike those generated by the mere presence of animal life (Nussbaum 2001:1511 original emphasis).}
\]

The dominant view continues to assert that there is something special about humans that differentiates them from, and preferences them above, all other animals. Such thinking has because a cornerstone of liberal thought in general, and mainstream liberal thinking on animal issues specifically. It includes the strongly held belief that for the purpose of moral theorising, the world is made up of two types of beings: humans and nonhumans.

That is not to suggest that the human/animal divide is the only example of liberal theorists conceptualising the world according to an ‘us’ and ‘them’ moral framework. Political theorist Kennan Ferguson writes:

---


36 In its philosophical guise, this type of theorising is normally constructed as the distinction between humans, who are ascribed personhood, and nonhuman animals, who are denied personhood. According to the moral orthodox view, ‘those who have the characteristics of personhood are deserving of moral superriority over those who do not’ (Garner 2005b:8). In its legalistic form, the division is between those who are assigned legal personhood and those who are not. Those who are not legal persons are thought to occupy the status of legal objects or property items.
For the essential tenet of liberal politics (as well as virtually all antiliberal politics) is that of the primacy of the citizen. Those marginal to the status of citizen provide the grounds of debate over issues of equality, rights, and political participation, for example, past questions about women and slaves and contemporary questions regarding minors and the imprisoned (Ferguson 2004:388).

Indeed, writing on the topic of ‘animal liberation’ in the New York Review of Books in 1973 Singer asserted that:

We are familiar with Black Liberation, Gay Liberation, and a variety of other movements. With Women’s Liberation some thought we had come to the end of the road. Discrimination on the basis of sex, it has been said, is the last form of discrimination that is universally accepted and practiced without pretense, even in those liberal circles which have long prided themselves on their freedom from racial discrimination. But one should always be wary of talking of ‘the last remaining form of discrimination’ (cited in Singer 2003).

Singer famously identified another constructed other – the sentient nonhuman. Yet, in the years since Animal Liberation was first published, few mainstream liberal theorists have adopted theoretical frameworks which challenge the legitimacy of a strong human/animal divide. This is despite other forms of discrimination having been seriously challenged. Indeed, mainstream liberal theorists rarely acknowledge the existence of nonhuman animals. Silence on animal issues, by liberal theorists, may be read as an unspoken belief that the moral issues which occupy the thoughts of such scholars are understood as applicable only to humans.
Where liberal theorists do acknowledge the existence of nonhuman animals, it is often done explicitly for the purpose of excluding animals from moral consideration on a comparable basis to humans. For example, philosopher Tara Smith, writing in defence of personal justice, defined justice as ‘the virtue of judging other people objectively and of acting accordingly, treating them as they deserve’ (Smith 1999:362). However, in the same article Smith asserted that ‘[w]hen we deliberate about tomatoes in the supermarket or hamsters at the pet store, our conclusions are not subject to standards of justice’ (Smith 1999:362). The implication of Smith’s moral framework is that, in her view, hamsters are more like tomatoes than they are like humans.

Smith may object to that assertion. However, even if such an objection is sound, it remains the case that Smith is forced into a position where hamsters and tomatoes must be grouped together (for the purpose of allocating both either weak interest protection or no interest protection at all) because her moral theorising occurs within the context of a world view which asserts that a line should be drawn between all human beings on the one hand, and all other life on the other. The practice of drawing lines in this way is common among liberal theorists and results in the counterintuitive insistence that there is more that divides human and nonhuman primates than unites them. Such an approach is problematic, especially when one considers that on the nonhuman primate side of the divide one may also find lizards, termites, trees, and, according to some theorists, even rocks.

37 Smith is silent on the issue of whether the way humans treat hamsters is a moral issue of any sort.
The external inconsistency, in its political guise, is underpinned by a belief that animals are not part of the political landscape. The exclusion of animals from the moral orthodoxy’s conceptualisation of political life means they are ‘outsiders’ and therefore not entitled to the strong version of interest protection reserved for those who occupy civil society – human beings. According to the orthodox liberal world view, nonhuman life exists somewhere ‘out there’ beyond the reach of political institutions. The theme of animals as political outsiders has been particularly well-articulated by political philosophers engaged in the task of conceptualising why humans come together for political purposes, and what ethical principles should underpin that unification. For example, consider the language used by Rawls in *A Theory of Justice* (1971) to justify the exclusion of animals from his justice principle:

> Last of all, we should recall here the limits of a theory of justice. Not only are many aspects of morality left aside, but no account is given of right conduct in regards to animals and the rest of nature… A correct conception of our relations to animals and to nature would seem to depend upon a theory of the natural order and our place in it (Rawls 1971:512).

Rawls draws a line between humans and ‘the rest of nature.’ According to Rawls, those on the human side should be granted the protection born of justice and equality. Everyone and everything else, including animals, must make do with ‘compassion and humanity’ (Rawls 1971:512).38 Likewise, writing some 200 years earlier, philosopher David Hume set the liberal tone by excluding animals from the justice principle, while simultaneously...

---

38 Martha C. Nussbaum describes the Rawlsian view, as it relates to what humans owe animals, as ‘duties of charity or compassion rather than justice’ (Nussbaum 2006:22).
granting them weak interest protection based on the premise that humans should be ‘bound by the laws of humanity to give gentle usage to these creatures’ (Hume 1998:88).

Like the majority of liberal theorists, neither Hume nor Rawls wants to suggest that human/animal interaction is not a moral issue of some sort. Rather, the paradigm within which both men were writing was one in which the world is thought to be made up of two component parts. One part consists of political agents who occupy civil society and who are owed justice, equality and rights. The other is the domain of natural beings who inhabit the uncivilised world and are owed only kindness. According to the moral orthodoxy, the form that kindness assumes is a matter for each individual human to decide upon. Furthermore, the kindness principle is constructed in such a way that it is only a voluntary service, and is therefore not backed by the state’s monopoly over the use of coercive force. The notion that benevolence towards animals is a personal virtue rather than a basic moral requirement forms part of the liberal concept of ‘moral pluralism.’

The contribution of Goodin et al. to the animal debate makes critical reference to the mainstream orthodox practice of excluding animals from civil society. They write:

In the social construction of boundaries and classifications that constitute our identities, the otherness of animals, including apes, has long been taken as a fixed point. Being ‘human’ is contrasted with being ‘animal’; being ‘civilized’ with ‘natural’; being a ‘civilized human’ with being a ‘wild man’, ‘an ape’, or ‘a monkey’ (Goodin et al. 1997:824).
Sociocultural anthropologist and philosopher Barbara Noske shares the view of Goodin et al. that traditional modes of political conceptualisation construct animals as existing outside political society. Noske writes:

The modern animal industries tend to be regarded as technically inevitable and politically neutral, since it is only relations between humans which are considered political. Human-animal relations are commonly viewed as technical and value-neutral in character (Noske 1997:23).

Like other animal protection theorists, Noske points out that the moral orthodoxy tends to perceive the lives of animals as apolitical. It is the apparent naturalness or apolitical character of animals which helps orthodox theorists assert the legitimacy of the human/animal divide. It is the human/animal divide which helps such theorists justify the practice of protecting the interests of humans according to one set of criteria and the interests of animals according to another. Furthermore, according to the stories political philosophers tell, it is the human occupation of political society which results in their strong interest protection, whereas it is animals’ occupation of nature which results in their interest protection being based on the weaker concept of benevolence. Writing in 1892, British animal protection theorist Henry Salt argued that there can be no justice for animals so long as they continue to be regarded as beings of a different order to humans (Salt 1892:9). That observation is as applicable in the early twenty-first century as it was in the late nineteenth century.

Noske emphasises the way in which the lives of animals have been commodified and farming processes industrialised. For example, see Noske (1997), Chapter Three. By comparison, this thesis is most concerned with the politicisation of animals via the enactment of legislation which prescribes the manner in which humans are to treat animals. However, both processes are part of the politicisation project.
In the next chapter it is argued that the lives of animals are in fact highly politicised. That argument is made in order to lay the intellectual groundwork for the discussion in Part IV of this thesis. In Part IV, Chapter X, it is asserted that if it can be demonstrated that the lives of animals are politicised, then sufficient basis should have been established upon which to assert that the principles valued in political society should be applied to the state’s treatment of captive animals.

The suggestion that the mainstream has rejected the idea that (some) animals should be granted moral, legal or political concern on a comparable basis to humans will be revisited in Chapter X. The marginalised nature of what Garner terms ‘pro-animal philosophies’ is integral to the argument presented in Chapter X because in that chapter it is argued that if the mainstream will not accept the integrity of animal protection theorising intended to challenge the external inconsistency, then a way forward is to question the appropriateness of the internal inconsistency. This could be done using liberalism’s own tools of equality and transparency. Addressing animal protection from the perspective of the internal inconsistency is unlikely to have the capacity to provide animals with the strong interest protection sought by theorists who wish to undermine the human/animal divide. However, the approach to animal protection proposed in Chapter X is specifically intended to accommodate mainstream opposition to the inclusion of animals within the human moral circle, meaning it is designed to be more broadly acceptable than the theories outlined so far.
In the next chapter it is argued that although liberal theorists have conceptualised political society as a humans-only space, some animals have in fact been drawn into human-constructed economic, political and legal systems. Seeing all animals as natural beings results in a flawed theoretical framework because it is counterfactual. The task of Chapter IV is to demonstrate that not all animals are part of the natural world, and to discuss the way in which those animals that have been politicised fit into a liberal democratic political framework.
Part II: Animals and the Liberal Democratic Political Landscape

Chapter IV: The Political Lives of Animals

Introduction

Robert Garner has made the most significant and sustained contribution to animal protection theorising by an academic working in the discipline of political science. Most recently, that contribution has focused on considering the implications of an enhanced moral status for animals from the perspective of a range of dominant political ideologies. Garner’s conclusions are outlined in a number of publications, with *The Political Theory of Animal Rights* (2005) offering the most comprehensive analysis of the issue. In that book Garner argues that liberalism has provided the philosophical framework upon which the most influential theories of animal protection have been developed. However, despite this, liberalism is not perfectly tailored to the task of affording nonhuman animals strong interest protection. Garner believes liberalism is not the ideal ideology because of the way the liberal principle of moral pluralism intersects with animal protection objectives. Garner writes:

---

40 Parts of this section have been published in O’Sullivan (2007). Some material in this section was also presented at the 2004 Australian Political Science Association (APSA) conference in a paper titled ‘Animal Welfare Policy: Justice, Visibility and Necessary Suffering’, and at the 2005 Compassion in World Farming (CIWF) conference, *From Darwin to Dawkins: The Science and Implication of Animal Sentience*.

As a result of excluding the impact of morals from the harm principle, animals then become subject to the liberal insistence on moral pluralism, whereby competing moral outlooks are permitted, provided of course they do not harm humans. Treating animals with respect then becomes merely a preference rather than a fundamental principle of justice… you may choose to cook lobsters by throwing them alive into pans of boiling water but my moral sensibilities are such that I am not prepared to do this. The state, in addition, is not encouraged to intervene in order to impose my morality on you (Garner 2005a:67 original emphasis).

Garner acknowledges that theorists such as Rawls, who excludes animals from strong interest protection on a comparable basis to humans but who seeks to afford them some weaker type of interest protection predicated on the notion of compassion, may object to Garner’s example because, arguably, cooking a sentient nonhuman alive is not consistent with the principle of benevolence. However, Garner dismisses that caveat on the basis that Rawls does not provide a comprehensive account of how and why humans’ treatment of animals should be limited, given the liberal commitment to the principle of toleration, so long as one person’s concept of the ‘good life’ does not limit the ability of others to pursue their own happiness (Garner 2005a:67). According to Garner, the liberal principles which inform the moral orthodoxy place a higher value on toleration of individual moral choice than on the wellbeing of animals. Garner’s analysis of the liberal tendency to deny animals interest protection on a comparable basis to humans has led him to conclude that ‘only by incorporating animals within a theory of justice, which leading liberal political theorists such as Rawls have refused to do, can liberalism be rescued’ (Garner 2005a:8). Political philosopher Martha C. Nussbaum concurs with the
view that the suffering of animals has tended not to be perceived of as a matter of justice. She writes that although the fact that ‘animals suffer pain and indignity at the hands of humans has often been conceded to be an ethical issue; it has more rarely been acknowledged to be an issue of social justice’ (Nussbaum 2006:2).

In The Political Theory of Animal Rights, Garner ultimately argues that, despite its shortcomings, liberalism is the most animal-friendly political ideology. Yet he also concludes that it is fundamentally unable to afford animals strong interest protection due to the unwillingness of the majority of liberal theorists to dismantle the human/animal divide. Indeed, in Animal Ethics (2005), which was released shortly after The Political Theory of Animal Rights, Garner appears to resign himself to liberal democratic states not safeguarding the interests of sentient nonhumans on a comparable basis to humans. He therefore seeks to critique the human/animal relationship according to the more conservative standard of animal welfare. Garner writes:

I am also conscious, not surprisingly perhaps, that because of my background as a political scientist it is extremely unlikely, in the near future at least, that Western societies will avail themselves of a new paradigm regarding their relationships with animals. As a result, it is important to ask whether what we do to animals is consistent with the mainstream or orthodox moral view about them (Garner 2005b:5).

In contrast to the theorists surveyed in the preceding chapter who focused on constructing a logically coherent argument in opposition to the external inconsistency by demonstrating that the denial of comparable interest protection to comparable beings is
arbitrary, Garner appears to accept the status quo (unwillingly). From that philosophical starting point Garner offers an analysis of the extent to which the principle of animal welfare is being met by current animal use practices. He concludes it is not. For example, Garner argues, in relation to animal agriculture, that ‘[t]he overriding conclusion deriving from this chapter is that by accepting the moral orthodoxy, as most people profess to do, much of what we do to animals in pursuit of food is morally illegitimate’ (Garner 2005b:119).

As a philosophical principle, Garner is correct in his assertion that the relationship between orthodox liberal thought and animal protection principles is problematic because, according to liberal theory, the way in which animals are treated falls under the auspice of moral pluralism. However, in actuality the way humans treat captive animals in liberal democratic political societies is often not left to the dictates of the individual’s conscience. For example, in the state of New South Wales (NSW), Australia, cooking lobsters by throwing them live into pans of boiling water is a legally construed act of animal cruelty when it occurs in a place where food is prepared for public consumption (NSW Government 2006a). Furthermore, if an animal researcher wishes to cook a lobster in that way, as part of a research protocol he or she has to apply for, and be granted, approval from an Animal Ethics Committee (AEC) (NSW Government 2005a). The AEC can reject part, or all, of the application. As Garner himself concedes, the western world

42 There is no question that Robert Garner is sincerely opposed to animal suffering and wished to advocate positively on behalf of animals. Garner says as much in the introduction to Animal Ethics, where he states ‘I strongly believe, as I will indicate here – and have indicated elsewhere – that animals are worthy of a higher moral status than the one currently given in developed countries and that, as a consequence, much of what we do to animals is unjustified’ (Garner 2005b:5). Yet Garner’s approach in Animal Ethics is different to the approach taken by the theorists surveyed in the preceding chapter to the extent that Garner appears to wish to show that even within the conservative paradigm of animal welfare, the principles its advocates profess to support are not being met.

73
has accepted the legitimacy of animal welfare legislation which effectively places limitations on human property rights in relation to their nonhuman property items (Garner 2002a:81-82). Although, as Garner argues, the extent to which the state is willing to limit property rights in order to safeguard the interests of nonhuman animals varies between jurisdictions, all liberal democratic states have nonetheless accepted that it is inappropriate to allow humans to treat animals in any way they wish. Even in highly individualist, liberal-orientated political cultures, such as is found in the United States, some limits exist (Garner 2002b). The battle over whether it is legitimate for the state to act in defence of sentient nonhumans, at the expense of the ability of some to realise their conception of the good life, has been fought and won. This means that in an abstract sense Garner’s findings are sound. But, in actuality, there exists a significant gap between theory and practice.

Given that, one of the purposes of this thesis is to respond to Garner’s theorising by suggesting that there may be more than one way to ‘rescue’ liberalism. Rather than ‘incorporating animals’ into the human justice principle on a comparable basis to humans, which is what animal protection theorists have tried to do to date, it may be possible to conceptualise an approach to animal protection which has the potential to grant animals equality without undermining the liberal belief in the importance of morally differentiating between animals and humans. This may be done by establishing the principle of equitable treatment among different categories of captive animals.43

---

43 What constitutes a captive animal is outlined below.
Establishing the case for equitable treatment for captive animals, in relation to other captive animals, requires a number of steps. First, it must be shown that the conceptualisation of all nonhuman animals as natural, and therefore apolitical, is flawed. Despite what orthodox liberal theorists may think, the lives of some animals have been explicitly politicised. Demonstrating that is the aim of this section. If that can be satisfactorily achieved, the next step is to show that the principle of equality is not being applied to captive animal regulation, despite the value placed on equitable treatment within the context of liberal democracies. Highlighting the inequity built into current animal protection mechanisms is the task of Chapter V. Providing the reader with an account of why theorists, and animal advocates, believe that inequity occurs is the aim of Chapter VI.

Some Theoretical Problems Associated with Viewing all Animals as Natural Beings

Like many theorists working with political philosophical concepts, when discussing issues pertaining to animals John Rawls displays the intellectual tendencies of someone who appears not to have thought much about animals. In *A Theory of Justice* Rawls seems to understand little about the reality of being a captive nonhuman animal living in a liberal democratic political state. Evidence supporting the proposition that Rawls’ comprehension of animal issues is simplistic may be drawn from the manner in which Rawls commits the common error of grouping all nonhuman animals together. To group all animals together is to assume that a genetically modified mouse who was conceived in a test tube and whose genetic code is owned in patent by a research company is in the
same legal, economic, or political situation as a marine species, unknown to humans, living on the ocean floor. The genetically modified mouse has been explicitly drawn into the dominant political structure and the stories liberal theorists tell about political society directly influences his/her life chances. The unknown marine species is in an entirely different situation.

The suggestion is not that Rawls purposely sought to misrepresent the position occupied by captive animals, or that other liberal theorists expressly do the same. Rather, the suggestion is that most political commentators are preoccupied with humans, so animals are inadvertently excluded from their theoretical framework. This is problematic because many nonhuman animals have been incorporated into the economy and the regulatory system, rendering the suggestion that the lives of animals are always ‘natural’ a fiction. It is a fiction because the state defines the extent to which human actors may manipulate the lives of nonhuman animals. Furthermore, the commodification and subsequent state regulation of captive animals ensures their life experience is ‘unnatural’ in important ways.

Consider the modern egg-laying hen. It is a fallacy to believe that the battery hen\textsuperscript{44} is in some way a ‘natural’ phenomenon. The modern egg-laying hen is derived from the South-East Asian rainforest fowl that has a seasonal laying cycle and produces around seven eggs annually (Dunlop and Williams 1996:374). Through crossbreeding, the annual egg production capacity of the laying hen was increased to around 120 eggs per annum.

\textsuperscript{44} The expression ‘battery hens’ is commonly used to refer to commercial egg-laying hens. This is because they are housed in battery cages, meaning cages stacked on top of each other.
Industrial processes have extended that to almost an egg a day. The hens are hatched in purpose-built breeding facilities. Once they are sexed the males are killed and the females are transported to their permanent home, a factory farm. The sheds in which battery hens are housed use high-level artificial lighting for up to 16 hours a day, creating the illusion that it is always spring. Antibiotics are used as a growth stimulant. When the hens’ laying capacity drops, a technique termed ‘forced moulting’ is used to restimulate production. During forced moulting hens may be kept in darkness, and food is either withheld or their diet is restricted. After their environment returns to its pre-forced moulting state, optimal egg production levels are recovered. Egg-laying birds are not commercially viable after twelve to eighteen months. They are then slaughtered and their flesh is sold to processed food manufacturers.

There is nothing natural about the egg production industry. To liken a battery hen to a wild fowl, or to a wilderness area such as a rainforest, which is its own self-sustaining ecosystem functioning independently of human-constructed social systems, is to misunderstand the manner in which humans have drawn certain nonhuman animals into the economy. If theorists fail to make a clear distinction between a free-living fowl and a battery hen, academics render themselves unable to make proper sense of modern political institutions and the place animals occupy within them.

For an animal to be classified as ‘politicised’, according to this study, he/she must be maintained in a captive state, either by means of domestication or restraint. The animal

---

45 The males do not lay eggs and are therefore a by-product of the commercial egg industry.
46 The state does enact legislation in relation to ecosystems. However, such legislation normally imposes negative duties upon human agents.
must be held in that state for the purpose of deriving benefit and must also be the subject of protective legislation.\textsuperscript{47} Free-living animals may have politicised lives to the extent that environmental policy impacts on them in a general sense. However, the animals under consideration in this study are those whose lives, and deaths, are highly regulated by the state.

Speaking in 2003 as part of the Tanner Lectures on Human Values series, Martha C. Nussbaum displayed the problematic intellectual tendencies of someone wishing to apply political philosophical principles to the human/animal relationship without an appropriate intellectual framework within which to do so. Unlike Rawls, Nussbaum cannot be accused of failing to give substantive thought to animal issues. Nonetheless, in that lecture Nussbaum struggled to apply her capabilities theory to nonhuman animals on a comparable basis to humans. The key difficulty underpinning that failing was her inability to distinguish between animals whose lives have been overtly politicised and those whose lives have not.

As part of her capabilities theory, Nussbaum has developed a list of ten ‘central human capacities’ which she argues should be positively nurtured in pursuit of justice. Number eight reads: ‘Other Species. Being able to live with concern for and in relation to animals, plants, and the world of nature’ (Nussbaum 2003:501 original emphasis). Nussbaum’s conflation of all nonhuman animals with plants and the world of nature is reminiscent of

\textsuperscript{47} Mike Radford notes that in the United Kingdom in 1996 there existed ‘almost three and a half thousand provisions relating to animals, and the number has subsequently continued to increase’ (Radford 2001:4). The number of animal protection provisions is likely to be equally large in other developed countries. However, not all acts pertinent to animals are intended to provide either positive or negative duties towards them because of a perceived direct duty humans have towards the animal. It is only legislation based on the principle of interest protection that is of interest to this study.
the schema employed by Rawls. It suggests that Nussbaum perceives of the world as being made up of two types of entities: humans and nature. In the case of Nussbaum, however, one is easily able to see how that common liberal practice of drawing a line between humans and all other life makes it difficult to develop a coherent and sustained political philosophy of animal protection.\textsuperscript{48} The problem with perceiving all animals as natural beings is magnified in the case of Nussbaum’s capabilities theory because it is specifically intended to be a theory of justice. It is a political theory, yet it is developed without proper acknowledgment of the political lives of many animals, making it difficult for it to meet the fundamental ethical criterion of consistency. Any attempt to develop a political philosophy of animal protection that tries to encompass both captive and free-living animals is likely to fall flat. It may be capable of dealing effectively with the reality of either ‘natural’ or ‘ politicised’ animals, but it is unlikely to be able to meet the demands of both simultaneously.

Nussbaum argues that a capabilities approach is superior to other liberal-based interest protection theories because it challenges the traditional distinction between positive and negative duties. She writes:

\begin{quote}
The capabilities approach calls this distinction into question. All the human capabilities require affirmative support, usually including state action. This is just as true of
\end{quote}

\textsuperscript{48} It is important to note that the reason the problematic nature of Nussbaum’s theorising on animal issues is so explicit is precisely because she has dedicated time to developing a theory of animal protection. This differentiates her from the majority of liberal theorists who do not acknowledge the existence of nonhuman animals. However, despite the attention Nussbaum has paid to animals, the framework within which she works does not serve her purpose well.
protecting property and personal security as it is of health care, just as true of political and civil liberties as it is of providing adequate shelter (Nussbaum 2003:498).

Yet despite the capabilities approach’s strength being its requirement for ‘affirmative support’, when it comes to applying that theory to nonhuman animals, Nussbaum argues:

In the case of animals, unlike the human case, there might appear to be some room for a positive-negative distinction that makes some sense. It seems at least coherent to say that the human community has the obligation to refrain from certain egregious harms towards animals but that it is not obliged to support the welfare of all animals, in the sense of ensuring them adequate food, shelter, and health care. The animals themselves have the rest of the task of ensuring their own flourishing (Nussbaum 2003:498).

The issue Nussbaum is struggling with, but does not articulate, is that an ethical approach to animal protection built around the idea of positive and negative duties is likely to be one in which it is thought fair to extend positive duties to captive animals and negative duties to free-living animals. The reason such an approach would seem just is that the commodification, and subsequent politicisation, of captive animals places an onus on the captor to be proactive in providing the animal with what he/she needs to survive (if not thrive), because removing captive animals from a state of nature means they are deprived of their ability to fend for themselves. That deprivation should result in a positive duty falling to the captor (if we accept as a starting point the proposition that humans have a direct moral duty towards nonhuman animals). By contrast, it would seem illogical to suggest that individuals, or the state, have a positive duty to all free-living animals. A
positive duty to ensure sufficient plankton in the world’s oceans so the capabilities of free-living marine species may be realised makes little sense, especially in the case of unknown animal species. Rather, a more logical approach would be a requirement that individuals, and the state, exercise a negative duty towards marine animals by not compromising their habitat. By restraining human behaviour in that way, free-living animals are allowed the opportunity to provide for themselves as best they can.

Nussbaum comes close to solving this intellectual dilemma when she writes:

[L]arge numbers of animals live under humans’ direct control… Humans have direct responsibility for the nutrition and health care of these animals, as even our defective current systems of law acknowledge. Animals in the ‘wild’ appear to go their way unaffected by human beings (Nussbaum 2003:498).

However, the final step – conceptualising animal protection according to whether the animal is politicised or not – is not taken.

*The Origins of Animal Protection by the State*

It has not always been self-evident that the state should use its power to regulate human/animal relations. Rather, legislative animal welfare measures came about in response to changing social norms which dictated that, in some cases where humans treat animals poorly, the state should intercede on the animal’s behalf. This is how legal theorist Mike Radford describes the environment that gave rise to animal welfare laws:
They [reformers at the end of the eighteenth century] were influenced by the intellectual fervour which characterized the period, and their concern captured a particular idea which is central to the eighteenth century Enlightenment: namely, that individuals matter. Generally seen in terms of human beings, they extended the principle to encompass other species. The significance and profundity of this idea cannot be over-emphasized: not only did it have far-reaching implications for our relationship with other species, it also posed a fundamental challenge to traditional assumptions about our place in the world. It endowed other species with a moral status; it focused on the consequences of human treatment; it recognized that at least some species were sentient; and it underpinned the argument that humans had responsibility towards them, which in turn formed the basis for the introduction of legal regulation (Radford 2001:viii).

Statutory interest protection for animals was the result of overtly political decisions. The enactment of animal welfare legislation was part of the process whereby some animals were estranged from nature and incorporated into modern social institutions. Prior to the nineteenth century, animals had been used by humans for economic purposes, and had been the subject of legislation. Yet the change that occurred in the early nineteenth century is important because it signified the beginning of a period in which the state became actively involved in regulating human/animal relations in order to protect the interests of nonhuman animals. It is, however, acknowledged that concern for human welfare interests, and/or a desire to control the working class, are likely to have contributed to the animal welfare reforms of the early nineteenth century.49

49 Some commentators have argued that early nineteenth-century legislators were more concerned with human sensibilities than the welfare of animals. For example, David Favre and Vivien Tsang write that
In keeping with the legislative analysis undertaken in Chapter IX, the discussion here focuses on early British animal protection arrangements. Such a focus is appropriate because animal welfare legislation originated in Britain and the world view that informed early animal protection laws continues to influence animal use regulation in western countries. This section is not intended as a comprehensive historical analysis of the origins of modern animal welfare legislation. Rather, the purpose is to demonstrate to the reader that many animals do not live lives that could meaningfully be described as ‘natural.’ This is partly because, as modern liberal democratic states began to develop and expand, they interpreted their responsibility as including regulation of the human manipulation of nonhuman animals. Thus, the lives of many animals became both economically instrumental and overtly political.

‘[t]he pain and suffering of the animal was not as much of a legal concern during this time as was the moral impact of the action on humans’ (Favre and Tsang 1993:6). In the British case there is good evidence to support a claim that legislators targeted disruptive animal uses such as baiting and fighting. It also seems clear that in the first half of the nineteenth century the British RSPCA was a quasi-evangelical organisation that viewed animal cruelty as the result of poor education. Historian Brian Harrison argues that ‘[t]he Society in its early years was quite unashamed in focusing primarily on cruelty committed at the lower end of society, quite explicit in its belief that cruelty was more common there than elsewhere’ (Harrison 1973:815). Chien-Lui Li agrees: ‘There was indeed only a blurred boundary between the concern for the morals and the manners of the lower classes and the suffering of animals’ (Li 2000). Furthermore, historian Dorothee Brantz argues that the shift away from many small-scale butchers carrying out their trade in full view of the public towards municipal slaughterhouses located on the outskirts of European cities was largely a result of the offensive nature of the task being performed. She writes that ‘complaints by the public, especially those living next to slaughterhouses, played a crucial role in the establishment of public abattoirs’ (Brantz 2003:16). That analysis also suggests that the interests of humans was a primary concern when constructing animal protection laws. Nonetheless, the weight of evidence suggests that concern for the wellbeing of animals did influence some early animal protection legislators. Pro-animal MPs withstood ridicule and also put considerable effort into enforcement. It is unlikely insincere politicians would have pursued the issue with such vigour. However, it is acknowledged that in the nineteenth century, as is the case today, animal welfare reformers may have also been concerned about the human condition.

50 In 1641 the Massachusetts Bay Colony (now part of the United States of America) passed a legal code called The Body of Liberties. That code contained two animal protection provisions: a general protection against cruelty and a provision that animals in transit receive appropriate rest stops. However, that code was not an animal welfare statute per se. The practice of creating specific pieces of legislation to protect the interests of nonhuman animals originated in early nineteenth-century Britain.

51 For further information concerning the origins of animal protection legislation in Britain, see Radford (2001), Harrison (1973), Fairholm and Pain (1924) and Salt (1980).
A discourse had begun to develop by at least the middle of the eighteenth century concerning the need to grant legislative protection to animals to safeguard them against cruel treatment.\textsuperscript{52} Informing that view was a perception that (at least some) nonhuman animals have inherent value (Fairholm and Pain 1924:5). Prior to that, animals had been the subject of legislation, but that legislation was primarily concerned with protecting human property rights in relation to animal property (Garner 1993:73). Richard Ryder notes that by the turn of the nineteenth century some magistrates had begun to use pre-nineteenth-century legislation to penalise perpetrators of animal cruelty. However, the structure of those laws, which were focused on protecting property rights (Radford 2001:29), meant they provided limited leverage for magistrates to use in pursuit of animal protection (Ryder 1989:77, 81).\textsuperscript{53} By contrast, the legislative activity around animal welfare that took place in the early nineteenth century was distinctive because it was underpinned by the notion that animals have a value independent of their sale value, and as such humans have a direct moral duty towards them.

In 1796, gentleman farmer and author John Lawrence wrote \textit{A Philosophical Treatise on Horses, and on the Moral Duties of Man towards the Brute Creation} in which he proposed ‘that the Rights of Beasts be formally acknowledged by the state’ (cited in Radford 2001:3). He argued that the suffering of animals ‘ought surely to form a part of the jurisprudence of every system founded on the principles of justice and humanity’.

\textsuperscript{52} For further information about the origins of humanitarian feelings in Britain, see Ryder (1989), Chapter Five.
\textsuperscript{53} Besides protecting property rights, prior to \textit{Martin's Act}, ‘the law would only intervene if a domestic animal was either treated in such a way as to cause a public nuisance, or harmed by a third party without the express or implied consent of the owner’ (Radford 2001:29).
(cited in Salt 1980:6). English writer and animal advocate Henry Salt argued that feelings of humanitarianism had become more prominent following the French Revolution, resulting in greater emphasis on the issue of human interest protection, especially rights-based protections (Salt 1980:4). Human protection mechanisms were quickly adapted by those concerned about animals. Professor of Animal Welfare, Donald M. Broom, believes that ‘[t]he view of domestic and other animals as sentient beings who deserved respect became influential in the wake of a similar developing view that persons of other nations, creeds, or colours and women had such qualities’ (Broom 2001:v). As the state became more involved in protecting the interests of vulnerable minorities, a growing proportion of observers began to argue that animals should be protected as well. A letter-writer to the influential Gentleman’s Magazine observed in 1789 that ‘[i]t is hard that there should be no law for brute animals, when they carry so large a proportion of representatives to every legislative assembly’ (cited in Radford 2001:30).

Twentieth-century historian Oliver MacDonagh constructed a model for interpreting the development of humanitarian legislation in nineteenth-century Britain. According to that model, welfare reform began with a public outcry in opposition to a specific institution or practice. The practice was deemed ‘evil’ and therefore construed as intolerable by those in positions of influence. By the nineteenth century, MacDonagh argues, governments were sensitive to such calls and, as the public sentiment became increasingly humane, mounting demands were placed upon the state to legislate evil happenings out of existence. Once the state was spurred into action, its first step was to enact an initial piece of legislation, no matter how watered-down. Compromise was always necessary to secure the first act. Following the enactment of the initial piece of reformist legislation it then
commonly became apparent that such legislation was not sufficient to curb the maligned practice. MacDonagh describes the preliminary statute as ‘commonly but an amateur expression of good intentions’ (MacDonagh 1958:59). From there the administrative apparatus of the state became increasingly expert in the area, and legislation was reworked and amended in order to more effectively achieve the intended reform (MacDonagh 1958:52–67). MacDonagh’s summation of the reformist function of the nineteenth-century British state appears to effectively capture many of the key elements in the development of animal protection legislation.

The first attempt to create legislation specifically focused on the welfare of animals was made in 1800\textsuperscript{54} when Sir William Putney introduced a bill into the House of Lords to prohibit the practice of bull-baiting.\textsuperscript{55} Putney’s bill was defeated. A further three attempts were made to enact animal welfare legislation between 1800 and 1821. Those attempts were also unsuccessful. Then, in 1822, Richard Martin MP successfully negotiated the passage of Britain’s first modern animal welfare bill through both houses of parliament. The Act was formally titled \textit{Act to Prevent the Cruel and Improper Treatment of Cattle}, but is most often referred to as \textit{Martin’s Act}. The Act applied only to certain cattle and draught animals (Salt 1980:7). It stated that a penalty would result ‘if any person or persons shall wantonly and cruelly abuse or ill treat any Horse, Mare, Gelding, Mule, Ass, Ox, Cow, Heifer, Steer, Sheep or other Cattle’ (Great Britain 1822). In keeping with MacDonagh’s analysis, \textit{Martin’s Act} was a simple piece of legislation, only two pages in length. It was also created in the spirit of political compromise (Favre and Tsang 1993:4)

\textsuperscript{54} For a full list of early British animal protection bills and acts, see Appendix I.

\textsuperscript{55} Baiting and other nineteenth-century animal sports are described in Chapter IX.
and as such included only some of the provisions Martin and other progressives had originally foreshadowed. According to one of Richard Martin’s admirers, Martin was able to secure the passage of the first piece of modern animal welfare legislation where others had failed because of his statesmanly ability to ‘know the mind of Parliament and the mind of the general public’ (Fairholm and Pain 1924:28). Martin introduced a number of other animal welfare bills into parliament after 1822, including repeated attempts to secure a ban on the practice of bull-baiting. However, he was ultimately unsuccessful and in 1826 he was forced out of parliament following a Select Committee finding that voting in his electorate had taken place in an unlawful manner (Lynam 1975:270).

Arthur Moss, author of the history of the British RSPCA, argued that within a few years of the passage of *Martin’s Act* the RSPCA board felt stronger legislation was needed to combat animal cruelty (Moss 1961:48). *Martin’s Act* was extended and supplemented many times between 1822 and 1911. In addition, a host of other animal protection laws were also enacted during that time. In 1833 dog-fighting was prohibited in London, as was bear-baiting, cock-fighting and badger-baiting (Great Britain 1833). In 1835 cock- and dog-fighting were outlawed more widely and slaughterhouses were more stringently regulated (Great Britain 1835). In the same year a prohibition was placed on ‘wanton’ cruelty and fines were introduced for anyone found keeping places for ‘fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal whether of domestic or wild

---

56 The year 1911 has been adopted as the cut-off point for consideration of early British animal welfare laws for two reasons. The first is that in 1911 Westminster overhauled Britain’s considerable animal protection statutes and created a single act. The year 1911 is also a significant date in the development of animal protection arrangements for pit ponies. Pit ponies are discussed at length in Chapter IX.
nature.’ In 1839 the use of dog carts in London was prohibited (Harrison 1973:789). By 1849 the Ill Treatment of Cattle Act was significantly expanded. The new Act stated that:

if any Person shall from and after the passing of this Act, cruelly beat, ill-treat, over-drive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, over drive, abused, or tortured, any animal, every such offender shall for every such offence, forfeit and pay a penalty, not exceeding £5’ (Great Britain 1894).

In 1854 the prohibition on the use of dogs to pull carts was extended throughout the United Kingdom (Great Britain 1854). In 1867 the metropolitan police were granted powers to impound stray dogs (Moss 1961:56) and in 1869 sea birds received some limited statutory protection. That year a committee was appointed to consider the possibility of introducing a ‘closed’ season for sea-bird shooting (Harrison 1973:790). In 1874 wild animals also received legislative protection, except when used for hunting purposes. In 1876 animals used in research were afforded limited protection for the first time (Great Britain 1876). In 1894 police were granted power to require seriously injured animals be slaughtered (Great Britain 1894) and in 1900 the protection already afforded wild animals was extended by virtue of the Wild Animals in Captivity Protection Act. Then in 1911 Westminster overhauled all animal protection legislation enacted in the previous 89 years and condensed and consolidated it into a key piece of legislation called the Protection of Animals Act. That Act, in its amended form, remains the primary legislative animal protection instrument in England in the early twenty-first century.
It was not self-evident to all early nineteenth-century Members of Parliament that animal protection legislation was an appropriate use of the state’s power. Those who sought to introduce animal protection legislation into the House had to withstand ridicule and claims that their actions would bring Westminster into disrepute. Few MPs attended parliament to debate the 1800 bill to prohibit bull-baiting. Of those that did, some mocked the idea (Ritvo 1987:125). George Canning, British Foreign Secretary in 1800, described William Putney’s Bill as ‘absurd’ (cited in Singer 1995:204) and William Windham, MP for Norwich, described it as ‘infinitely beneath the deliberate dignity of parliament’ (cited in Radford 2001:34). Similarly, in 1811, when Lord Erskine introduced an animal protection bill into the House of Lords, he was ‘shouted down’ (Salt 1980:7). Others received the same treatment. In 1821 it was reported that:

When Alderman C. Smith suggested protection should be given to asses, there were such howls of laughter that The Times reporter could hear little of what was said. When the Chairman repeated this proposal, the laughter was intensified. Another member said Martin would be legislating for dogs next, which caused a further roar of mirth, and a cry ‘And cats!’ sent the house into convulsions (cited in Turner 1964:127).

Indeed, the level of ridicule endured by early animal reformers was such that a well-known painting, The Trial of Bill Burn, was produced during the period. It featured a donkey being led into a courtroom in order to testify in a cruelty case against his owner. The painting was intended to mock the proceedings of the first anti-animal cruelty prosecution, brought by Richard Martin against Bill Burn. Historian Brian Harrison

---

57 Richard Martin was often the subject of public ridicule. For more information see Lynam (1975).
argues that ‘[r]idicule greeted every nineteenth century proposal to widen the area of animal protection’ (Harrison 1973:788). Historian Harriet Ritvo agrees. She argues that ‘[e]very attempt to extend humane legislation encountered resistance and even ridicule, despite abundant evidence of continuing cruelty’ (Ritvo 1987:128).

Another issue of concern to early nineteenth-century legislatures was the extent to which the provision of anti-animal cruelty statutes unfairly targeted working-class pursuits (Ryder 1975:183). From 1800 until the 1830s, the prohibition of urban animal sports was a key issue for animal protection legislators. Ryder argues that ‘[c]ruelties to dogs, horses and meat animals, most notably those being driven to the Smithfield Market in London’ were the animal uses of greatest concern, yet reformers chose to focus on urban sports such as bull-baiting because they were easy targets (Ryder 1989:81). This was because, unlike the sport of fox-hunting, baiting and fighting were working-class pursuits. Ritvo writes:

Although in earlier periods animal combats had appealed to spectators of all ranks, by the beginning of the nineteenth century they were generally considered to be the province of the vulgar. In 1801 Joseph Strutt noted in his survey of English recreations that ‘bull and bear-baiting is not encouraged by persons of rank and opulence in the present day, and when practised… it is attended only by the lowest and most despicable part of the people’ (cited in Ritvo 1987:150 original abridgment).

However, the use of animals for the purpose of natural science investigation was the exclusive domain of the upper classes (Ritvo 1987:157). Vivisection was the subject of
some of the hardest fought battles by the early modern British animal protection
movement and was also a relatively early subject of government enquiry and legislative
intervention.

A final reservation, which appeared to have influenced both Members of Parliament and
animal protection activists in the early nineteenth century, had to do with the
appropriateness of the state extending its authority into the private sphere. William
Windham MP asserted in relation to the 1800 animal welfare bill that:

This petty, meddling, legislative spirit cannot be productive of good; it serves only to
multiply the laws, which are already too numerous, and to furnish mankind with
additional means of vexing and harassing one another (cited in Radford 2001:34).

Windham also objected to the bill on the basis that it denied the working class one of the
‘few enjoyments which are left to them’ (cited in Radford 2001:34). A similar sentiment
was expressed in an article in *The Times* in 1800, in which the author argued that the state
should only act to protect human bodily integrity and that legislative protection for

---

58 The issue of vivisection was the cause of the first significant split in the animal protection movement. Some felt the RSPCA had not taken a sufficiently hard line against the practice (Ritvo 1987:157), preferring rather to concentrate on beasts of burden and animals used for baiting and fighting. For further information on divisions in the RSPCA over the issue of vivisection, see French (1975).

59 MacDonagh argues that one of the reasons nineteenth-century Members of Parliament resisted the state’s expansion into new regulatory areas was in order to keep the state’s spending low (MacDonagh 1958:62). Although this is likely to have been a factor in general, in the case of animal protection, responsibility for enforcement was taken on initially by willing volunteers acting independently, then by volunteers acting under the auspices of the RSPCA, and finally by inspectors paid by the Society. Harrison argues that as the state became involved in animal welfare it did not seek to curtail the activities of animal protection philanthropists (Harrison 1973:787). This differentiates animal welfare from other areas of humanitarian reform.
animals would cause the state to overstep its appropriate limits, the result being that ‘we must eat and drink and play and sleep by Act of Parliament’ (cited in Radford 2001:34).

Some active members of the animal protection movement in the nineteenth century appear to have shared the view that certain animal protection provisions were inappropriate because they required the state to intrude into the private sphere. At the RSPCA’s 1835 annual meeting, the organisation’s vice-president was recorded as stating that:

> It is impossible to make people humane by Acts of Parliament; many animals, for example, are beyond the reach of legislation – for instance, dogs. What law, I ask, could protect them, without the odious alternative of intrusion on private life? It is not because we wish to be less kind to dogs that we would exclude them from protection, but because we wish to avoid an inquisition into private life (cited in Fairholm and Pain 1924:73).

It appears that the first obstacle to statutory animal protection was the view that it is inappropriate for the state to intervene on behalf of nonhuman animals, where cruelty is perpetrated in the public sphere. The second obstacle was the view that it is even more inappropriate for the state to intervene on behalf of nonhuman animals where cruelty is perpetrated in the private sphere. The view that the private sphere is not a legitimate arena for statutory intervention is an influential liberal notion and one which child protection advocates and feminists have also had to challenge.
The provision of animal protection legislation is now common throughout the developed world. Furthermore, it is normal for all major political parties to have an animal welfare policy, and for those policies to be increasingly detailed. Former British Prime Minister John Major observed in 1994 that ‘[t]he welfare of animals is no longer a fringe issue’ (cited in Radford 2001:171). As is argued in the following chapter, not all animal protection legislation is effective in protecting the interests of all animals, under all circumstances. However, shortcomings aside, all western nations have some type of state-sponsored animal protection arrangement in place.

At present, international captive animal welfare provisions are also evolving. The Great Ape Project was an early attempt to internationalise animal protection principles. Since the beginning of the twenty-first century the World Organisation for Animal Health (OIE) has sought to position itself as a leader in the process of ‘gradual harmonisation of existing national and regional legislation’ (Vallat 2006). To date the OIE has developed international standards relating to animal transportation, slaughter and killing animals to control disease (World Organisation for Animal Health 2006). More recently the World Society for the Protection of Animals (WSPA) launched its ‘Animals Matter to Me’ campaign, the purpose of which is to persuade the United Nations (UN) to adopt ‘A Universal Declaration on Animal Welfare.’ The declaration is intended to recognise ‘animals as sentient beings, capable of experiencing pain and suffering, and… that animal welfare is an issue of importance as part of the social development of nations worldwide’ (WSPA 2006). As the international community moves towards a more coherent approach to animal protection, animal welfare legislation is also becoming more common in
developing nations, with many viewing the establishment of animal welfare principles as an important part of the modernising process.

The Categorisation of Animals for Political Purposes

So far it has been argued that theorists who work with liberal concepts tend to ignore the existence of nonhuman animals. As a result animals are excluded from their theoretical framework. It has further been argued that those theorists who do acknowledge nonhuman animals tend to do so for the purpose of marginalising or excluding them. This is done by casting animals as ‘natural’ entities. It has also been argued that to view all animals as a single group is to misunderstand that some animals live according to their biology and instincts (free-living animals) and some live according to the rule of human law (captive animals). Finally, it has been asserted that the practices of either ignoring the existence of nonhuman animals or perceiving them as natural beings render theorists unable to properly make sense of the place animals occupy within modern political institutions. It also results in animals being excluded from access to strong protective principles. To remedy such problematic theorising, it has also been suggested that the first step is for theorists to acknowledge that although it is true that many nonhuman animals are part of the natural world, it is also true that many are not. As such, in order to understand the place animals occupy within political society it is necessary to distinguish between free-living and captive animals and then recognise that the lives of captive

---

60 The use of the term ‘captive’ may be controversial for some readers. Australian animal protection legislation and policy does not make specific use of the term ‘captive.’ It is therefore used in the context of
animals have been both commodified and politicised. The lives of free-living animals are exogenous to this study and therefore will not be considered further.

For the purpose of understanding captive animals as political entities it is erroneous to view that group as a single coherent unit itself. Rather, when thinking about animals in a political context, captive animals must also be broken into smaller subgroups. The purpose here is to identify and describe those subgroups. The groups outlined below reflect the structure of the animal industrial complex. Furthermore, since the early nineteenth century, animal protection legislation has been developed largely in response to the different ways in which humans seek to derive benefit from animals. So, to some extent, animal welfare legislation mirrors the animal industrial complex.

Before proceeding it is important to note that the categorisation presented here may be contentious. Some animal protection organisations have developed alternative models, as have some theorists. Variations may be the result of differences in animal use

---

this study as a descriptive device intended to differentiate between those animals whose life chances are outlined in legislation and those animals whose lives are not explicitly regulated by the state. However, that term may not be entirely appropriate for readers familiar with certain political jurisdictions. For example, in Britain, the *Protection of Animals Act* attributes a specific legal meaning to the term ‘captive’: ‘any species of animal not normally domesticated but in captivity or under some form of human control’ (Garner 1998:76). That is not necessarily the sense in which the term is used here, although that definition does describe some animals who fall under the captive categorisation as it is used in this context.

61 The Society & Animals Institute has developed what it calls ‘The Animals’ Platform.’ The purpose of the platform is to ‘position animal issues in the arena of public policy’ (Society & Animals Institute nd). The 2004 draft version, which at the time of writing is the latest version available on the Institute’s website, is incomplete, but in that version the animal industrial complex is divided into four component parts: animals in research, testing and education; animals in agriculture; companion animals; and wildlife.

62 In Robert Garner’s 1998 publication *Political Animals*, he divides animals into four political groups: wildlife conservation; animal experimentation; domesticated animals; and farm animals (1998:17). Garner does not account for why the division is made that way. However, his purpose in that book is different to the purpose of this study. Garner was interested in how pressure groups influenced the state and whether that influence was significantly different in the case of the United States compared to the United Kingdom. This study does not try to account for how the detail of legislation is created. Rather, the focus is on
regulations between jurisdictions. They may also be due to differences in interpreting the structure of the animal industrial complex. Yet, in the absence of a single agreed-upon standard, the following model is put forward as an appropriate representation. Although open to challenge, a model of some sort is necessary for a number of reasons. First, a key claim of this thesis is that animal protection arrangements are inconsistent. A model such as the one presented below will be used to help expose these inconsistencies. Second, a number of claims are made about the precise function of that inconsistency. Those claims are also more easily demonstrated by the use of a model. However, it is not necessary to agree with the detail of the proposed categorisation in order to accept the overall argument put forward in this dissertation. The process of identifying the way animals are categorised politically is not an end in itself, but rather a means to showing that animal protection arrangements are inconsistent. A different categorisation could achieve the same outcome.

identifying whether there is a relationship between an animal’s level of visibility and levels of statutory interest protection.

63 This categorisation was presented at the 2005 Compassion in World Farming (CIWF) conference, ‘Beyond Sentience,’ and also in a 2004 Australasian Political Studies Association conference paper that has been published as part of the University of Sydney’s Working Papers Series (O’Sullivan 2005b). The same categorisation, minus the table, is due for publication in 2007 as part of the *Encyclopedia of Human/Animal Relations*, edited by Marc Bekoff and Jane Goodall.
Once the free-living/captive division is made, the captive group is divided into two further groups: non-economically productive animals and economically productive animals. Non-economically productive animals are animals maintained for purposes other than stimulating the economy or progressing human development. Non-economically
productive animals are companion animals, most commonly cats and dogs, housed in small numbers in people’s homes. In economic terms, companion animals are consumption units, not production units. The benefits humans derive from companion animals are emotional, not economic.

Economically productive animals are animals that humans maintain for the purpose of generating wealth, carrying out the functions of the state, stimulating the economy or achieving a technological advantage. They are maintained in order to deliver a profit or other economically significant return. Garner writes:

No one can question that animals are a source of significantly important economic interests. In addition, animals are used with the aim of improving human health, to ensure that humans are protected against potentially dangerous substances and products, and as a source of food, clothing and entertainment (Garner 1998:39).

Economically productive animals are further broken down into four subgroups. Those groups reflect the primary economic functions attributed to nonhuman animals. The subgroups are:

- **Agricultural Animals** – animals raised and/or maintained for meat, wool, dairy, eggs or any other animal derived food or fibre.
- **Research and Education Animals** – animals raised and/or maintained for scientific or educative purposes, including product testing.
- Exhibited, Sports and Gaming Animals – animals raised and/or maintained for entertainment purposes such as zoos and circuses. This group also includes animals who entertain through competing in sporting events, such as horseracing, or other interactive recreational activities such as rodeos. Animals are used in sports not only because of their entertainment value, but also to facilitate gaming.

- Law Enforcement and Assistance Animals – animals raised and/or maintained in order to carry out a statutory function, for example, drug sniffer dogs and police horses. This group of animals also includes assistance animals and working dogs. Working dogs are dogs used as part of the agricultural process.

Now that the case has been made that some animals have been explicitly brought into the political system, as a result of the legislature responding to concerns that the economic instrumentality of some animals was harming them in inappropriate ways, the task of the next chapter is to demonstrate that the animal welfare legislation that has been created to protect some animals from harm is inconsistent in the protections it provides. In order to examine that issue, in Chapter V the discussion returns to an analysis of the internal inconsistency.
Chapter V: The Internal Inconsistency: Inconsistencies in Animal Protection

Mechanisms

Introduction

In Chapter III it was argued that since the 1970s animal protection theorists have tended to focus on the external inconsistency or the way the interests of animals are protected in relation to the interests of humans. It was argued that orthodox theorists tend to draw an imaginary line between humans and all other life. Those on the human side are conceptualised as political beings and as such their interests are protected by strong protection mechanisms. By contrast, animals are either excluded from political philosophical frameworks or are construed as natural entities existing independently of political institutions. Those theorists that do acknowledge nonhuman animal life tend to assert that animals are owed only weak forms of interest protection, such as kindness, benevolence and compassion. Those principles are thought to be the basis of good moral behaviour towards animals, but their application is not (at least in theory) backed by the state. This means that according to traditional liberal values, it is best to be kind to animals, but if one chooses not to be, the state will not interfere.

In response to this, pro-animal theorists of the last thirty years have tended to focus on demonstrating that there is more that unites human and nonhuman animals than divides them. For example, Francione argues that ‘concern about animals reflects both our own moral development as a civilization, and our recognition that the difference between humans and animals are, for the most part, differences of degree and not of kind’
(Francione 1994:721-722). Given that there is no single identifiable, consistent character difference between all human and all nonhuman animals that may be used to justify species-based discrimination, pro-animal theorists argue that the application of strong interest protection to humans and not to animals is irrational, arbitrary and speciesist. According to pro-animal theorists, if marginal humans are entitled to strong state-sponsored interest protection, then so too are (some) nonhuman animals.

The purpose of this section is to define and describe another type of inconsistency which occurs in relation to animals – the internal inconsistency or the way animals are treated in relation to comparable animals. The internal inconsistency is embedded in state-sponsored protection mechanisms such as animal welfare statutes. The occurrence of the internal inconsistency has not gone unnoticed. Garner, for example, argues that:

[T]he level of protection afforded to an individual animal depends, not just – if at all – upon its needs and interests, but upon the institutional and legislative structure governing the particular use to which it is being put. To take one example, a rabbit raised for food would be subject to a totally different set of legislative criteria than would one utilized in a laboratory or one existing in the wild or one owned as a pet (Garner 1998:21).

Demonstrating that animal protection arrangements are inconsistent is central to the overall argument presented in this thesis and the task of this section. Once the internal inconsistency has been described, the structural principles which facilitate the internal inconsistency are outlined. Finally, the way in which theorists have conceptualised and explained the internal inconsistency is also discussed.
The Inconsistent Nature of Animal Protection Laws

In Animal Rights: Current Debates and New Directions (2004) Sunstein argues that in the state of New York ‘anyone who has impounded or confined an animal is obliged to provide [that animal with] good air, water, shelter, and food’ (Sunstein 2004:6). Yet, in New York, as is generally the case throughout the western world, that statement is incorrect as a matter of fact. Sunstein later qualifies his remark by noting that exemptions exist. He writes:

[A]nticruelty provisions of state law contain large exemptions. They generally do not regulate or ban hunting. (It is not permissible to deprive domestic animals of adequate food and shelter, but it is permissible to chase and to kill wild animals.) They generally do not apply to the use of animals for medical or scientific purposes, nor to the production and use of animals as food. Because the overwhelming majority of animals are produced and used for food, the coverage of anticruelty laws is actually very narrow (Sunstein 2004:6).

This means that what appears at first to be a significant positive protection – the provision of air, water, shelter and food – is in fact not such a strong protection after all. That is because in the state of New York, humans are legally permitted to treat animals in a range of ways that deprive them of air, water, shelter or food. In the case of non-economically productive animals it is likely that few statutes, or their accompanying regulations, allow for air, water, shelter, or food deprivation. However, in the case of economically productive animals it is likely there are a range of situations in which such deprivation is
construed as legally permissible, or is in fact standard practice. For example, if the state of New York has an animal research and teaching sector, including universities that teach biological science, medicine or veterinary science, then within that context it is conceivable that legally sanctioned cases of air, water, shelter and food deprivation occur. They would occur in instances where the provision of air, water, shelter or food is incompatible with a particular research project. Similarly, if the state of New York has an animal agriculture sector, then food and water deprivation is also likely to occur on a regular basis, for example, during transportation or in times of drought.

Important to the study at hand, the practice of denying air, water, shelter or food to animals for research purposes does not mean that all animals may be legally denied air, water, shelter or food. Rather, as discussed below, legally sanctioned deprivation of that type is likely to be an exception within the context of an overall principle which states that it is an act of cruelty to withhold such provisions. This is because animal welfare legislation is structured in such a way as to allow deprivation towards certain types of animals only when those animals are engaged in specific activities.

Law professor Darian M. Ibrahim writes:

[W]hile noble in theory, [anticruelty statutes] are ineffective in practice because they do not challenge the majority of modern practices that exploit animals. Broad exemptions for animal agriculture, animal experimentation, hunting, and other institutional or ‘customary’ activities exist in some form in the anticruelty statutes of every state, whether drafted by legislators or read in by courts (Ibrahim 2006:175).
Francione illustrates the practice of creating protective statutes, and then exempting certain categories of animals, in the following way:

In a 1982 Rhode Island [US] case, *State v Tweedie*, the defendant, who claimed he was curious about what would happen, was convicted of killing a cat by placing it in a microwave oven at his workplace cafeteria. We cannot conclude, however, that in Rhode Island putting cats in microwave ovens is prohibited. Tweedie’s crime was not in what he did, but in his doing it outside of recognized institutionalized exploitation. That is, had Tweedie been a research scientist curious about such matters, he would have been exonerated because such use has been deemed ‘necessary’. And there are many instances of such animal use in experimentation (Francione 1996a:193 original emphasis).

Writing for *The Encyclopaedia of Human/Animal Relations* (Bekoff and Goodall, forthcoming), I illustrate the relationship between an animal’s industrial categorisation and legal inconsistencies, via reference to a fictional rabbit named Bugs:

Bugs is bought at a pet store and taken home as a present for a young boy. The boy is careless and leaves Bugs’ hutch open. Bugs escapes and lives freely at the local golf course for a year. The manager then undertakes a trapping program to rid the golf course of rabbit pests. Bugs is trapped and sold, along with all the other rabbits, to a fur farm. The fur farming company then decides to move their business offshore and sells its remaining animals, including Bugs, to the local college where animals are used as part of an education program. Two years later the college decides to stop using animals in teaching and they donate all their animals, including Bugs, to a small local zoo. If all that
was to ever happen to a single rabbit it would be an extraordinary journey! However, the key point to note is that at every stage of Bugs’ life, the law would have protected him in different ways. When he was an agricultural animal the local animal welfare legislation may have ensured that he received food and water. When he was a research animal he may not have had any legal right to food and water, but the law may have said that he had to be provided with straw for nesting. As an exhibited animal he may have been legally entitled to live in a large cage, but when he was a feral rabbit he may have had no legal protection whatsoever. What this suggests is that legislators do not begin with the premise: ‘what do rabbits need?’ or ‘what would cause a rabbit to suffer?’ Rather, animal welfare legislation is best viewed as seeking to protect animals from ‘unnecessary’ or ‘unreasonable’ suffering, while allowing animal industries to engage in their trade (O’Sullivan forthcoming).

A captive rabbit living in a liberal democratic state may be entitled to some type of statutory interest protection. However, the nature of that protection is always in flux.

*Structural Mechanisms Facilitating the Internal Inconsistency*

The internal inconsistency is achieved via a range of mechanisms, some of which have already been alluded to. In the first instance inconsistencies occur due to the practice of creating protective legislation for animals generally and then exempting certain categories of animals from certain protective provisions. For example, in the case of the *NSW Prevention of Cruelty to Animals Act 1979*, the act’s stated objectives are:
(a) to prevent cruelty to animals, and

(b) to promote the welfare of animals by requiring a person in charge of an animal:

(i) to provide care for the animal, and

(ii) to treat the animals in a humane manner, and

(iii) to ensure the welfare of the animal (NSW Government 2006a).

One of the ways in which that statute seeks to protect animals from cruelty is by the provision in Section 9 which states that: ‘[a] person in charge of an animal which is confined shall not fail to provide the animal with adequate exercise’ (NSW Government 2006a). However, subsection 1A of Section 9 clarifies that:

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 (NSW Government 2006a).

This means that in NSW it is an act of animal cruelty to keep an animal confined by means of a cage unless that animal is normally kept confined in this way. In other words, the exercise provision only protects those animals who are not vulnerable to exercise deficiency, and does not protect those who are. In this case the exemption significantly limits the effectiveness of the negative duty established by Section 9 because ‘an animal of a species which is usually kept in captivity by means of a cage’ could be any species of animal categorised as agricultural. In NSW, Agricultural Animals are not protected against harm caused by exercise deficiency, whereas other categories of animals are.
The second way in which the internal inconsistency is achieved is by excluding certain categories of animals entirely from a statute’s terms of reference. Lawyers David J. Wolfson and Mariann Sullivan describe the phenomenon as it occurs at a federal level in the United States in the following way:

In the case of farmed animals federal law is simply irrelevant. The Animal Welfare Act, which is the primary piece of federal legislation relating to animal protection and which sets certain basic standards for their care, simply exempts farm animals, thereby making something of a mockery of its title (Wolfson and Sullivan 2004:207).

The wholesale exclusion of certain categories of animals from captive animal protection legislation is not uncommon. Garner writes of British animal protection laws:

Another… problem of the 1911 [Protection of Animals] Act is that it only applies to a limited number of animals – those which are normally domesticated (such as horses, cattle, cats and dogs) and those which are ‘captive’… The consequence of this is that wild animals, even when temporarily under the control of humans are not protected by this Act (Garner 1993:76).

Furthermore, in some jurisdictions, different pieces of animal welfare legislation regulate specific industries. The practice of creating a range of different statutory protection instruments, each reflecting a different industrial animal use, and then making the
The legal property status attributed to nonhuman animals was discussed in the previous chapter. In that chapter it was argued that, legally speaking, one is either a ‘person’ or a
‘thing’ (Favre 2000:502; Francione 1995:126). Among legal theorists there is broad consensus that, at law, nonhuman animals are ‘things’. This was the case at the time the first animal welfare statute was enacted, and remains the case today. Mike Radford writes:

The effect of the 1822 Act, together with the significant and sophisticated body of protective legislation developed subsequently, has been to qualify the common law freedom which allowed humans, especially owners and those acting under their authority, to treat other species in whatever way they saw fit… These measures have not, however, had the effect of fundamentally altering the traditional legal status of animals. Rather, protective legislation regulates their treatment against the backdrop of the common law’s traditional principles; and wherever these are not superseded by legislation, they continue to apply… Legal regulation of the way in which animals are treated therefore continues to be essential in order to offset the otherwise unconstrained property rights of the owner under common law (Radford 2001:102 original emphasis).

Because animals retain the status of private property items, many animal protection theorists argue they cannot be attributed legal rights (Favre 2000; Francione 1995; Denholm 1999; Ibrahim 2006; Tannenbaum 1995; Wise 2000). This is significant because rights function to protect an individual’s interests, and as sentient beings animals have interests. Regan discusses the concept of moral rights via an analogy to a ‘no trespassing’ sign. He argues that rights have the effect of ‘morally limiting the freedom of others’ (Regan nd). Legal rights are the pragmatic application of that moral principle. Although the protection of human rights is often imperfectly executed, those rights are
basic protective principles that should not be compromised regardless of the benefit which may be generated by doing so. In the absence of basic protective principles applicable to all animals, the state may pick and choose if and how animals are to be protected.

As already discussed, animals’ legal status also has implications from the perspective of legal standing, meaning there are limitations on who may bring a legal action in their defence. The problematic nature of being a sentient piece of legal property has led some pro-animal legal theorists to argue that the repudiation of animals’ property status should be the central aim of the animal rights movement. For example, Francione asserts that ‘what is needed is the *incremental eradication of the property status of animals*’ (Francione 1996a:4 original emphasis); in his view, such a move is necessary in order to end animal cruelty, which occurs due to legally sanctioned exploitation. Others, most notably American animal law theorist David Favre, have developed models they believe will allow this repudiation to occur (Favre 2000).

However, the view that animals are property items, and that their status as such should be challenged, is not without contention. For example, Garner draws on the expertise of a number of animal protection theorists who assert that although animals are property items at law, they are property items of a specific type and it is therefore erroneous to conclude

---

64 Sunstein points out that such a goal can be interpreted to mean two things. On the one hand, it may imply the limited aim of ‘an effort to remove a legal status that inevitably promotes suffering.’ Or, in a more expansive sense, it may mean that animals should be viewed as legal persons, meaning ‘they should have many of the legal rights that human beings have’ (Sunstein 2004:11).
that just because animals are legal things that they are legally indistinguishable from inanimate objects (Garner 2005a:48-49). Garner himself argues that:

It is not the existence of stringent property rights that explains the relatively poor animal welfare record in the United States [compared to Britain]. Rather, it is the fact that animals are regarded as insufficiently important to be included within a Mill type harm principle within which their interests would sometimes prevail. Where they are so inclined, it becomes illegitimate in some cases to exploit animals on liberal grounds because to do so is to act in an other-regarding fashion by depriving them of liberty or even life, or causing them to suffer. This applies whether or not animals are regarded as the property of humans (Garner 2005a:52-53 original emphasis).

Sunstein appears to agree. He states:

We could retain the idea of property but also give animals far more protection against injury or neglect of their interests. Or we could say that animals are not property, as children are not property, but still give human beings a great deal of control over them, as parents have control over their children (Sunstein 2004:11-12).

Furthermore, Sunstein is of the view that if the notion of rights is understood to mean legal protection from harm, then animals do in fact already enjoy rights of a certain type (Sunstein 2004:5).

Yet regardless of how problematic the property status attributed to animals actually is, or whether it is in the best interest of nonhuman animals for the animal protection
movement to focus on repudiating that status, it remains the case that animals are
currently legal property items within the context of an economic system underpinned by
private property relations. In the current political and economic climate there is no need
to provide an ethical justification for the existence or perpetuation of property rights
(Macpherson 1975:105; Becker 1977:3). Indeed, modern property is commonly construed
as a necessity (Favre 2000). Private property relations are integral to liberal democratic
political systems and capitalist economies. Because animals are legal property items, and
according to dominant and strongly held liberal principles the purpose of private property
is to facilitate wealth creation, an economic analysis of the inconsistent nature of animal
protection legislation has tended to dominate the discussion of bias in animal protection
arrangements. This is despite the fact that the state intercedes to limit property rights in
relation to animal property items, under certain circumstances.

According to the most popular critique of the economic principles informing the structure
of animal protection regulations, the concept of ‘necessary’ or ‘justifiable’ suffering lies
at the heart of the commercial functionality of animal protection statutes. Necessary
suffering is also the primary cause of the internal inconsistency. Radford argues that
‘although there is no single, common principle which underpins animal protection
legislation in the United Kingdom, the prevention of unnecessary suffering is a recurring
theme’ (Radford 2001:242). This is also the case in many parts of the developed world,
including Australia.

---

65 Some authors prefer the expression ‘unnecessary suffering.’
In practice, the concept of necessary suffering means that animal welfare laws tend to protect animals against random or non-purposeful acts of cruelty. However, the concept of necessary suffering allows for the instrumental use of animals as a means to human economic ends. That principle has the effect of permitting acts of cruelty when cruelty is economically expedient, and prohibiting them when they are not. Theorists who analyse the concept of necessary suffering tend to use the concept to account for why, as a general principle, animal welfare legislation best serves the interest of non-economically productive animals.

*Martin’s Act* of 1822 did not specifically use the term ‘necessary.’ However, although the word was not included in the Act, a discourse concerning the concept of the necessary suffering and its application to animals had already begun to develop by the early nineteenth century. For example, in 1809, an editorial in the *Gentleman’s Magazine* railed against the failure of an animal protection bill with the words ‘[s]urely few subjects in the whole compass of moral discussion can be greater than the unnecessary cruelty of man to animals’ (cited in Ryder 1975:184). Yet even in the absence of a specific reference to the concept of necessary or justifiable suffering, the 1822 Act effectively set the tone for animal welfare legislating within the context of capitalist economies and liberal democratic political states. It did so by allowing for the human use of animals as an economic resource as a general principle, while simultaneously either curtailing or prohibiting certain uses which were deemed by the legislator to be unnecessary. The unnecessary nature of certain animal uses was due either to the use itself being considered illegitimate, for example the use of bulls for baiting, or the use being unnecessary in the sense that the suffering caused to the animal was thought to be
excessive. For example, it may be considered necessary to use horses to pull draughts, but
unnecessary to laden the draught to such an extent that the horse struggles and dies in an
effort to pull it. The effect of such a structural arrangement is that animal uses associated
with economic expediency tend to be permitted, while animal uses which are not tend to
be prohibited. Former president of the UK RSPCA, Captain Fairholm, and his co-author
William Pain wrote that by the 1840s:

Many difficult battles were waged round the questions of unnecessary suffering. Thus, it
was held that the spaying of sows, a very painful operation in itself, was not cruelly ill-
treating the animals within the section, because it was done under a *bona fide* belief that it
improved the flesh for human food, and therefore served a useful purpose (Fairholm and
Pain 1924:146 original emphasis).

Francione has made an important and sustained contribution to the scholarly
understanding of the inconsistent nature of animal protection legislation. In his view the
fact that animals are legal property items, and animal welfare legislation permits the
infliction of pain on animals so long as it is ‘necessary’ to do so, means that animals
utilised in large-scale wealth-generating industries are vulnerable to cruelty because
animal welfare law is unable or unwilling to effectively protect their interests. He writes:

Some laws prohibit the ‘unnecessary’ infliction of suffering, but such laws are useless, if,
as is the case, no one is under a duty not to do any particular act; and indeed, virtually all
acts involving animals are considered ‘necessary’ as long as there is some identifiable human benefit (Francione 1996a:193).

The conclusion Francione draws is that when human interests are weighed against the interests of nonhuman animals, the interests of the former persistently prevail because, in the eyes of the law, the interests of two different entities are being weighed. On the one hand the interests of a rights-bearer are being measured; on the other, the interests of a property item are under consideration (Francione 1996a:2000). Francione argues that this is an unequal contest resulting in a situation whereby ‘animal use that occurs outside institutionalized exploitation is just about the only animal exploitation that is prohibited’ (Francione 1996a:193). By that, Francione means that only random acts of cruelty are legally prohibited.

Garner defines unnecessary suffering as ‘suffering which serves no significant human purpose’ (Garner 2005a:5). Although the concept of a ‘significant human purpose’ is itself a contestable notion, Garner appears to support Francione’s analysis of the link between necessity, animal suffering, and economic imperatives. Like other commentators in the field, Garner draws the conclusion that because animal protection statutes allow some animal cruelty to occur; because the permissibility of that cruelty is predicated on the notion of necessity; and because the notion of necessity is most often construed as meaning benefit to humans, including economic gain, the result has been that animal protection legislation has tended to be biased in favour of non-economically productive animals. Garner writes:
Thus, the law does not judge, in isolation, what we do to animals but also the purpose of what we do. The very same infliction of suffering which would result in a prosecution if the animal were a family pet, would be allowed in a laboratory if it was judged that the benefits (to human health or whatever) were sufficient (Garner 1997:190 original emphasis).

That is not to say that all conceivable cruelty against economically productive animals is legally sanctioned. But where animal cruelty is permitted by animal protection legislation, it tends to take place against economically productive animals. Again, Garner argues:

There is little question that intensive farming methods cause suffering. Indeed, this is recognised by contemporary legislation in Britain, the United States and elsewhere since if ordinary members of the public kept animals in the same way that many farmers do they would be liable to prosecution under general animal protection laws. What becomes crucial, then, is the extent to which this suffering is justified which, in terms of the conventional or orthodox morality, is to be judged in accordance with how significant, the human benefits produced by it are (Garner 1993:107).

Among pro-animal theorists it is common for the discussion of the concept of necessary suffering to be largely critical of its application to animal protection law. However, Mike Radford has written in defence of the principle. Radford argues that the concept of ‘unnecessary suffering’ has become central to the legal definition of animal cruelty (Radford 2001:241) and as such the definition of cruelty ‘depends upon a number of
factors, including its nature, the circumstance in which it arises, and the perspective of the observer’ (Radford 2001:245). Radford’s analysis of the application of necessary suffering to animal protection arrangements is consistent with the interpretation made by other theorists in the area, namely that animal cruelty is most easily justifiable when it is purposeful and that ‘the crucial issue is the respective weight the courts attach to the conflicting interests of man and animal, especially in commercial situations’ (Radford 2001:246). Radford further argues that because the concept of necessary suffering is commonly applied to animal protection legislation, the meaning of animal cruelty is not dictated by the detail of the statute but rather by the manner in which the courts interpret the term (Radford 2001:247).

Radford is of the opinion that the notion of necessary suffering has two significant merits. The first is that ‘it may be applied to a multitude of different situations’ and the other is that ‘it can be constantly reinterpreted by the courts in the light of greater understanding about animal suffering, and changing social attitudes regarding the proper treatment of animals’ (Radford 2001:258). Philosopher Bernard E. Rollin agrees that the concept of necessary suffering allows for the continual reinterpretation of what is meant by the animal cruelty. He argues that ‘[t]he traditional definition of “necessary suffering” as suffering that is inconvenient to alleviate is moving toward redefinition as suffering that is impossible to alleviate’ (Rollin 1990:3460 original emphasis). However, Radford

---

66 It should be noted however, that governments in Australia and elsewhere put considerable energy into trying to direct animal protection arrangements. The judiciary can only rule on statutes that have been created by the state, and their accompanying codes and regulations are intended to clarify which forms of animal use are permissible and which are not. Indeed Radford concedes as much when he writes that ‘the courts will consider a practice which is expressly or by implication permitted by legislation… to be legitimate, provided it is carried out in a reasonable manner. This is so, even though there may be an alternative means of achieving the same end which causes less suffering’ (Radford 2001:249).
further argues that the advantage of the flexibility inherent in a contestable concept such as necessary suffering is that it dispenses with the need to consistently amend and update animal protection legislation.

Radford’s view on this matter will be significant to later discussion. However, for the moment the point should be made that it seems logical to argue that the concept of necessary suffering allows for the continual reinterpretation of community standards as they apply to animals. Indeed one of the key claims made in Parts III and IV is that what is construed as ‘necessary’ is likely to change depending on the extent to which those who do not have a direct pecuniary interest in an animal’s suffering are exposed to the act under consideration. For example, if face branding were to take place in the presence of an objective observer they may consider the procedure to be significantly less necessary than if it were to take place in some far-away context.

Before proceeding, one final comment about the functionality of animal welfare law and the concept of necessary suffering should be made. Regardless of the effectiveness of the principle of necessary suffering or otherwise, it is important to note that the concept does not extend to loss of life. Radford writes:

> The morality of killing animals may be the subject of continuing controversy, but at present the law is clear: it is permissible to kill an animal (excepting those particular species which benefit from statutory protection), provided it is not accompanied by unnecessary suffering (Radford 2001:244).

67 Face branding is a cattle identification system which uses a hot iron to burn a mark onto the animal’s face.
This may be unsurprising given that much of the value humans derive from animals is realised only after the animal is killed. But the central point remains that animal welfare law is precisely that – legislation concerned with an animal’s welfare. If animal welfare law does attribute rights to nonhuman animals it does not include a right to life. Animal protection laws focus on what limitations should be placed on the amount of pain and suffering a human may inflict on a captive animal while the animal is alive. This study is therefore not concerned with questions regarding the taking of an animal’s life. Rather, it is exclusively focused on the extent to which the state is prepared to intercede on behalf of different types of animals to protect their interests while they are alive.
Chapter VI: Views on the Internal Inconsistency from within the Animal Protection Movement

Introduction

Active members of the animal protection movement have tended to agree with a scholarly analysis of the inconsistent nature of animal protection regulations which identifies the root cause of that inconsistency as the economic instrumentality attributed to some animals, combined with the way the law facilitates the human use of those animals via the legal concept of necessary suffering. In response, animal advocates have sought to undermine the economics of the animal industrial complex by constructing arguments intended to challenge the principle of necessary suffering. This is most often done by seeking to demonstrate that many of the common ways in which humans harm animals are not necessary. Garner writes that ‘animal advocates challenge the very necessity of exploiting them [animals], either on the grounds that their use does not produce the benefits claimed for it and/or that the use is unnecessary because trivial’ (Garner 1998:39). Such arguments are commonly used in the debate over the use of animals in research and teaching. For example, Animal Liberation NSW carries a message on its website claiming:

Animal Experimentation is said to be necessary for the welfare and health of humans.

This is simply not true. Experimentation on animals continues because it is beneficial to

---

68 Parts of this section were published as conference proceedings for the 2006 Australasian Political Studies Association (APSA) annual conference. The paper was titled Conflict and Coherence within the Australian Animal Protection Movement.
the huge Medical, Technology, Research, Drug Company alliance that is increasingly intervening in our lives and our health (Animal Liberation NSW nda original emphasis).

On the same website it is also claimed that animal research is not necessary for two reasons: first, many causes of human ill-health are preventable; second, there are alternatives to the use of animals in research (Animal Liberation NSW nda).

However, animal advocates have not limited their criticism of animal welfare policy to a critique of the concept of necessary suffering. Rather, it is also common for animal advocates to express the view that if more people knew how animals are treated then harmful animal uses would occur less often, or would not occur at all. For example, People for the Ethical Treatment of Animals (PETA) has produced a DVD called ‘Meet your Meat.’ A copy was sent to every member of US Congress. It includes the assertion that ‘[o]nce you see for yourself the routine cruelty involved in raising animals for food, you’ll understand why millions of compassionate people have decided to leave meat off their plates for good’ (cited in Animal Liberation Victoria nda).

The debate over what the public’s response would be if exposed to animal suffering has occurred most extensively in the area of animal experimentation. The detail of that debate is more fully considered in Chapters VIII and XI. In short, animal advocates argue that people support animal research because the animal suffering it causes is hidden from them. Animal researchers, on the other hand, tend to claim that opposition to animal research is largely a result of animal advocates overstating the extent of the suffering involved. Furthermore, the research community asserts that those who oppose animal
research are ignorant of the benefits such research brings. Important to the study at hand, little reliable data has been generated in support of activists’ claims that direct exposure to animal cruelty is likely to minimise its occurrence. Nor has the animal research community, or others involved in the animal industrial complex, demonstrated the validity of the opposing argument. This is a significant deficit in the animal protection literature.

The absence of evidence to support or refute the claim that there is a link between visibility and cruelty is even more problematic given that it is not uncommon for scholars to also use similar arguments. For example, Jasper and Nelkin argue that the reason the early animal protection movement developed was that in the nineteenth century the western middle class was largely removed from direct nonhuman animal exposure. That deficiency meant that the only animals with whom humans could relate were highly sentimentalised companion animals (Jasper and Nelkin 1992:14–15). They write:

\[T\]he social roots of this movement lie in the changing relationship between humans and their fellow creatures that resulted from urbanisation and industrialisation in Western societies, as city dwellers began to encounter animals only as family pets, and less and less as instruments of labour and production (Jasper and Nelkin 1992:4).

In Jasper and Nelkin’s view, the development of an animal protection ethic is contingent on a void in direct animal exposure. Where direct exposure to animals does take place the animal must be maintained for purposes that are not economic. Because humans do not seek to derive benefit from non-economically productive animals the relationship
between the two tends to be based on nurturing principles as opposed to exploitation. The result is a perception that humans have a direct moral duty towards animals in their care, and that such a duty should be extended to all animals, including those used in the economic process. However, Jasper and Nelkin do not provide evidence in support of their claim that there is a nexus between moral concern for animals and the absence of economically productive animals from the lives of urban dwellers. It therefore remains a matter of conjecture.

Scholars have also argued the issue in the opposite direction, that is, that direct exposure to economically productive animals has resulted in the advent of moral concern for the wellbeing of animals. For example, Peter Singer and Jim Mason make a claim which is central to the issues under consideration in this thesis. Within the context of a discussion concerning the suffering of pigs raised under intensive conditions, and the lack of effective legislation (with the United States as an example) to protect the interests of factory-farmed animals, Singer and Mason assert:

> When a sow is first put into a stall, she typically tries to escape and may push against or attack the bars. After a time, she gives up, and often becomes quite inactive and unresponsive… Other sows in stalls carry out meaningless, repetitive motions, like biting the bars of the stall, chewing the air, shaking their heads from side to side, nosing around repeatedly in the empty feed trough. These pointless movements are signs of stress, similar to the endless back and forth pacing of tigers and other big cats when kept in the traditional sterile cages of old-fashioned zoos. Fortunately, many zoos have become more enlightened and no longer keep their animals in such cages. No doubt public disapproval
helped persuade them to make the change. Sows in factory farms are actually worse off than the big cats in zoos used to be, because they can’t even pace back and forth. But they are invisible to the public (Singer and Mason 2006:43).

That passage suggests that Singer and Mason believe the conditions under which Exhibited, Sports and Gaming Animals live are superior to those of Agricultural Animals; animal exhibitors have raised their standard of care (over what period is unclear); the rise in standards is the result of pressure (either direct or implied) from their patrons (the public); and the inferior conditions suffered by Agricultural Animals are (either partly or entirely) a result of their low visibility status. Yet a number of unanswered questions persist. For example, from what Singer and Mason write, it is unclear whether they believe zoos voluntarily lifted their animal housing standards for marketing purposes – that is, because people were unhappy viewing animals in barren cages. Or did they do so because members of the public complained directly to them and they felt it necessary to respond out of fear of repercussions? Did zoos see the wisdom in the public’s concerns and therefore self-reform out of a sense of moral duty? Or did the public make their objections known to legislators who then imposed stricter regulations on animal exhibitors, in a way that has not occurred in the agricultural sector? Again, in the absence of evidence, the link between visibility and animal cruelty to which Singer and Mason point is largely a matter of supposition.

Sunstein claims that ‘[a]lmost everyone agrees that people should not be able to torture animals or to engage in acts of cruelty again them’ (Sunstein 2004:6). Yet it is also well-established that some animals endure conditions which many in the animal protection
movement liken to torture. Furthermore, some partisans share the view that some elements of modern animal agricultural systems, some research practices, and some forms of animal entertainment, are cruel. So, if Sunstein is correct in his assertion that most people oppose animal cruelty, yet animals do suffer within the animal industrial complex, it seems appropriate to ask the question: although most people oppose animal cruelty, does cruelty occur because people are prepared to tolerate it for the economic benefits it generates? Or is it the case that most people oppose animal cruelty, yet it continues to occur not just because it is economically expedient but also because most people are unaware of its occurrence? Further to that, even if people are aware in an abstract sense that animal cruelty does take place, does the absence of direct exposure to animal suffering allow the majority to tolerate a level of animal cruelty they would be unwilling to accept if they were required to observe it? The purpose of Part III is to investigate such questions.

The notion of visibility is complex and its relationship to animal suffering is unlikely to be either linear or simple. The institutional limitations of this research mean that only some aspects of that link can be examined. The focus that has been selected here is the nexus between the structure of animal protection legislation and the visibility levels of the groups of animals identified in Figure I. Such an approach assumes that economic imperatives inform the way animals are written into animal welfare statutes, and that the state plays a pivotal role in regulating the relationship between humans and captive animals. Furthermore, although it is accepted that agents representing the interests of those who benefit from the animal industrial complex, and their opponents, invest considerable energy trying to influence the structure of animal protection statutes (using
methods including direct political lobbying and consumer campaigns), this study assumes that within the context of a liberal democratic state, the will of the people can at least be partly read into the content of animal welfare laws. The central question guiding the research undertaken for the following chapter therefore is: does an animal’s level of (non-pecuniary) visibility inform the extent to which the state is willing to use its authority to protect the animal from harm, as reflected in the structure of animal protection legislation?

The notion of non-pecuniary visibility is introduced here because all animals enjoy some level of visibility, since humans are invariably involved in the process of extracting profit from them. However, the type of visibility generated by those who directly benefit from animal use is not considered an adequate level of visibility to generate the types of protective principles this study seeks to examine. Rather, this thesis is predominantly concerned with how the state responds to animal welfare concerns generated by those who are not directly involved in, and benefiting from, a particular animal use. It is necessary to make that distinction because protecting one’s livelihood is likely to curtail the extent to which an individual is critical of animal use arrangements. However, before such issues can be examined it is necessary to set up the discussion by considering in detail the way in which the animal protection community views the link between visibility and animal cruelty. That is the task of the remainder of this chapter.

69 For more information about this, see, for example, Garner (1998).
The Three Philosophies of the Animal Protection Movement

The animal protection movement is not a single coherent unit which speaks with one voice. Therefore, before examining how it understands the link between visibility and animal cruelty, it is important to differentiate between competing ideologies. Jasper and Nelkin assert that the animal protection movement is made up of a range of groups that ‘vary widely in their aims’ (Jasper and Nelkin 1992:8). They further argue that ‘[c]ontrasting goals, tactics, and philosophical positions bring forth different organizations that form a continuum from reformist to radical’ (Jasper and Nelkin 1992:8). Jasper and Nelkin believe those disparate groups may be broken up into three ‘clusters.’ They call those clusters ‘welfarist, pragmatist and fundamentalist’ (Jasper and Nelkin 1992:8). The notion that the animal protection movement is constituted by three discrete and potentially conflicting ideologies has been further developed by Francione. The groups identified by Francione are similar to those described by Jasper and Nelkin. However, Francione calls them ‘old welfarism’, ‘new welfarism’ and ‘animal rights’ (Francione 1996a). The vocabulary employed by Francione has become part of the animal protection lexicon and as such it is the terminology used in this study. Francione’s description of the three animal protection positions, both philosophically and from a tactical perspective, has been equally influential and will also be adopted in this section to distinguish between competing ideologies.

If those three animal protection positions are placed along a political continuum, with the most conservative ideology represented on the right and the most progressive world view represented on the left, they look like this:
The purpose of placing the positions along a political continuum is threefold. First, it serves to acknowledge that there is no clear division between each position, but rather one feeds into the other. Second, it effectively depicts the manner in which each consecutive ideology built upon the former, and in doing so became more radical. Finally, conceptualising the positions along a continuum appropriately reflects the manner in which each world view originally developed as a philosophy of human/animal relations and then evolved into a distinct political agenda.

Old welfarism is the oldest, most conservative, and most popular philosophy of animal protection. It developed with the Enlightenment and is reflected in *Martin’s Act* and the foundation principles of the RSPCA. The old welfare world view is one in which it is considered appropriate to use animals as a human resource, so long as that use is limited in two ways. First, limits should be placed on the way humans interact with, and extract benefit from, nonhuman animals. This principle includes placing a prohibition on certain animal uses. For example, in modernising Britain, legislators considered it inappropriate to use cocks for fighting, but appropriate to kill them for food. Second, the extent to which humans may cause animals to suffer in pursuit of human benefit – that is, the concept of necessary suffering – should be limited. Necessary suffering is a central principle of animal welfare philosophy. Tom Regan argues that ‘[w]elfarists ask that animals not be caused any unnecessary pain and that they be treated humanely’ (Regan 1998:42). Old welfarism is the dominant philosophical position of animal protection in
the modern era. Gratuitous and purposeless cruelty against animals is not socially acceptable. At the same time, the use of animals as an economic resource is a respectable and common element of modern culture, even when that use causes suffering. Old welfarism asserts the primacy of humans over other species of animals yet also calls for ‘gentle usage.’

The old welfare philosophy dominated animal protection advocacy until the 1970s, when the philosophy of new welfarism began to develop. That philosophy requires that the suffering of animals be viewed as significant in comparable ways to human suffering of a similar nature. One of the most influential theorists of new welfarism has been Peter Singer. Singer argues that the suffering of all sentient life is significant and should be considered when reaching a decision as to whether a particular action is moral or not. The philosophical principles of new welfarism do not inherently prohibit the use of animals as a means to human ends. However, they do place a heavy onus on animal users to justify the way they treat animals. The conclusion reached by Singer, and others who subscribe to a new welfare ideology, is that almost all modern industrial animal uses are morally unjustifiable when animal suffering is attributed an appropriate moral weight. Yet despite this conclusion, in an applied political sense, new welfare animal protection agencies – which is actually the vast majority of all modern animal protection organisations – accept an incremental approach to animal protection. This means that even if a new welfare animal protection advocate desires an end to all factory farming, he or she may put energy into achieving a ban on a single intensive agricultural practice on the basis that systematic reform will eventually generate significant structural change.
In the 1980s, an even more radical philosophy of animal protection was born. It is the principle of animal rights. Unlike old and new welfarism, the concept of animal rights does not invite a cost–benefit analysis of animal suffering against human benefit. Rather, the animal rights position asserts that it is morally wrong to use animals as a means to human ends. In 1983, Regan published *The Case for Animals Rights*. That book remains the primary philosophical defence of moral rights for nonhuman animals. In that book Regan argues that some animals are ‘a subject-of-a-life’ and those animals are deserving of the strongest possible interest protection, namely the protection afforded by rights. This means that harming such animals is inherently wrong:

> We are… never to harm the individual merely on the grounds that this will or just might produce ‘the best’ aggregate consequences. To do so is to violate the rights of the individual. That is why harm done to animals in pursuit of scientific purposes is wrong. The benefits derived are real enough; but some gains are ill-gotten, and all gains are ill-gotten when secured unjustly (Regan 1983:393).

The philosophy of animal rights is largely abolitionist. It does not seek to reform the animal industrial complex, but rather aims to dismantle it. Indeed, Francione has taken that distinction even further. He argues that a true animal rights position is not only abolitionist, it also requires that animal advocates not pursue incremental welfare reform at all. He argues that animal rights advocates:

130
should not pursue traditional welfare reform; rather we [animal rights advocates] should pursue abolitionist change that incrementally eradicates the property status of nonhuman and recognises that nonhuman have inherent value (Vaughan nd).

Francione arrives at that conclusion because he believes that there is no ‘historical evidence to believe that welfare reform would do anything other than perpetuate animal exploitation’ (Vaughan nd).

Yet although animal rights constitutes a particular philosophical position based on significantly different principles to those that underpin the two welfarisms, over the last decade there has been a considerable degree of confusion concerning who is, and who is not, an animal rights advocate. This has occurred for a number of reasons. First, the general concept of rights has become a cornerstone of moral discourse in the late twentieth and early twenty-first centuries. Rights are understood by many as providing the strongest articulation of an individual’s interests, and as such an appeal to rights has become a central feature of popular moral debate. The strength many identify as inherent in a claim to rights generally has been applied to animal protection concepts. Because of this, those who wish to express strong opposition to animal cruelty often choose to describe themselves as ‘animal rights advocates’ or ‘animal rights activists,’ regardless of whether or not they actually subscribe to the philosophical animal rights position. The practice of animal advocates self-labelling as animal rights advocates has become common among those who actually adhere to a new welfarist political philosophy. Second, the label ‘animal rights’ has also been embraced by the mass media. This has further confused the issue. For example, the Australian Broadcasting Corporation (ABC)
has described American animal protection organisation PETA as an ‘animal rights group’ (ABC News 2005). That description is consistent with the way PETA defines itself.

However, the manner in which PETA carries out its work is not entirely consistent with an animal rights philosophy. For example, PETA has repeatedly negotiated animal welfare reforms with animal use industries. According to the schema employed by Francione, that action undermines PETA’s claim to being an animal rights organisation.

Third, the strictly incremental abolitionist approach as defined by Francione is difficult to sustain in the long term. Therefore, it is common for those organisations and individuals that desire animal rights outcomes to quickly find themselves pursuing a welfare reform agenda. Such advocates must then be classed as new welfarists according to Francione’s dichotomy, which has been adopted here.

When Singer was asked whether it is appropriate to describe him as an animal rights activist, he offered this response:

So am I an animal rights activist? It depends really what you mean. In The Philosopher's Zone\(^{70}\) I'm certainly not an animal rights activist, because when you look at the term ‘rights’ philosophically, that is not the foundation of the view that I hold. And yes… I don’t think either for humans or for animals, that rights are really the foundations of this.

But in popular parlance, when people talk about human rights or animal rights I can certainly say I support human rights, I’m opposed to violations of human rights wherever they occur, by and large, and I think that we should recognise animals as having certain rights, so that we can’t do certain things to them. It’s a kind of a popular shorthand, so

---

\(^{70}\) The Philosopher's Zone is the name of a radio program broadcast on ABC Radio National. It is concerned with the discussion of philosophical matters.
that nowadays, almost any cause or protest becomes a rights issue, and in that popular sense, I don’t mind the label. (The Philosopher’s Zone 2006)

The conflation of the popular concept of rights with the philosophical use of deontologically derived ethical principles to advocate in favour of some nonhuman animals presents a challenge to anyone seeking to analyse the structure of the animal protection movement. Yet Singer’s response is instructive. For the purpose of this study, therefore, it is acknowledged that some animal advocates choose to define themselves in terms of animal rights, and according to the popular use of that expression the label may be legitimate. However, the nature of this study is such that it would be inappropriate to conflate the concepts of rights and welfarism. It is therefore in the scholarly sense that the term ‘animal rights’ is used throughout this dissertation.

A Brief Introduction to the Animal Protection Movement in Australia

In this section, interview data elaborating on the animal protection movement’s perception of a link between an animal’s level of visibility, and the statutory interest protection the animal receives, is presented. The interviews were conducted in order to form a clearer view on how animal advocates currently conceptualise and explain that link. The survey data was collected by interviewing active members of the Australian animal protection movement. As such, it is appropriate to first say something about the history and structure of the animal protection movement in Australia. The following is
not a comprehensive history, but rather a brief introduction highlighting significant milestones.

The first Australian Society for the Prevention of Cruelty to Animals was established in Victoria in 1871 (RSPCA Victoria 2006). According to Hugh Worth, RSPCA Australia’s president since 1981, the impetus for the organisation’s establishment ‘was the sight of horses being thrashed on Melbourne’s Collins Street’ (cited in Yallop 2006:29). Other states quickly followed suit. The NSW RSPCA was established in 1873 (RSPCA NSW nda) and by the end of the nineteenth century there was an RSPCA in every state and territory of Australia. In the 1960s the state-based organisations began working together on issues of national significance, and in 1981 the Australian RSPCA was formed. The RSPCA remains the most numerically significant animal protection organisation in Australia, with 18,000 voting members, 3,887 child members and over 5,000 active volunteers (RSPCA Australia nda).

The RSPCA’s position as the most influential animal protection organisation in Australia is partly the result of the organisation’s close links to government. Employees, volunteers, and supporters of the RSPCA make a significant contribution to statutory boards and panels convened to consider issues pertinent to animal wellbeing. Augmenting the RSPCA’s close governmental links is the organisation’s extensive law enforcement powers. The RSPCA is empowered under many Australian animal protection statutes. State-based RSPCAs receive an annual government grant to assist in bringing animal cruelty prosecutions. However, the bulk of the RSPCA’s income is

---

71 As at the 2003-2004 financial year.
generated by donations and sponsorship. The RSPCA investigated 41,150 cruelty complaints across Australia in the 2003–04 financial year. In the same period the RSPCA initiated 330 prosecutions for animal cruelty. The RSPCA also plays a dominant role in Australian re-homing and desexing programs (RSPCA Australia nda). RSPCA organisations throughout Australia comfortably meet the definition of ‘old welfare. For example, RSPCA Australia’s charter states that:

RSPCA Australia believes that man must treat animals humanely. Where man makes use of animals or interferes with their habitat, he should bestow a level of care befitting man’s own dignity as a rational, intelligent, compassionate being, and a level of care merited by the nature of the animal as a sentient creature capable of responding to man’s care and attention. Such care should be marked by sympathy, consideration, compassion and tenderness towards animals (RSPCA Australia ndb).

The RSPCA has dominated the debate over animals in Australia for 100 years.

The 1975 publication of Australian Peter Singer’s *Animal Liberation* built on the small amount of work already undertaken by progressives such as Ruth Harrison who wrote the animal protection classic *Animal Machines* (1964). Singer’s work was in part born of his relationship with the ‘Oxford Group,’ a loose association of academics and intellectuals who met during the late 1960s and early 1970s in the city of Oxford, United Kingdom, to debate and campaign on animal protection issues (Ryder 1998:261–262). The publication of *Animal Liberation* made a timely and significant impact on the Australian animal

---

72 In Australia the expression ‘desexing’ is used to describe the process where by animals are rendered unable to reproduce. In some countries this process is referred to as ‘spaying’ or ‘neutering.’
protection movement. Critics of the RSPCA commonly accuse the organisation, both in Australia and elsewhere, of focusing too much of its energy on companion animals, while neglecting the suffering of the majority of animals – those used for food production and research. *Animal Liberation* provided a voice and ideological framework for people disenfranchised by the old welfarist approach of the RSPCA and comparable organisations. In *Animal Liberation* Singer concentrated exclusively on the suffering of animals in factory farms and research laboratories. He also built a strong argument for enhanced animal protection principles by making it more difficult to justify cruelty to animals in pursuit of human interests.

It was the publication of *Animal Liberation* that gave rise to the animal protection organisations bearing that name. Animal Liberation NSW was the first Australian Animal Liberation organisation, founded in 1976. Other Animal Liberation groups quickly formed, as did other organisations with similar philosophies and aims. In 1980 the Australian and New Zealand Federation of Animal Societies, now Animals Australia (AA), was formed. Animals Australia currently has 37 member societies and serves as an umbrella group for many of the progressive animal protection organisations throughout Australia.

Animal Liberation NSW, and other organisations with similar philosophical positions, have gained a certain degree of prominence over the last thirty years. Animal Liberation NSW has around 650 financial members (Animal Liberation NSW 2006).\(^{73}\) It has no law enforcement functions and is not often represented on government panels or boards. A

\(^{73}\) As at June 2005.
significant degree of the profile Animal Liberation groups enjoy has been generated by the organisations’ use of ‘Open Rescue.’ Open Rescue involves activists entering private property, often a factory farm, and removing sick, injured or dying animals. The animals are taken to a veterinarian for a health assessment and those in a suitable condition are placed with an animal sanctuary. The practice is referred to as Open Rescue because the process is documented, usually by video camera, and the activists often seek to release the footage to the media, politicians, law enforcement agencies, or among the animal protection community. On the website OpenRescue.org the practice is defined in the following way:

Open Rescue is based on the moral premise that it is wrong to knowingly let any individual, regardless of their species, die an unnecessarily slow, agonizing and painful death. Rescue workers are bound by compassion, competence and a willingness to always help others in need (Animal Liberation Victoria ndb).

Open Rescue was pioneered by Patty Marks who has been the president of Animal Liberation Victoria (ALV) intermittently since 1978 (Marks 2001:26). Animal agricultural issues, such as the use of the battery cages for egg-laying hens, have received only scant attention from old welfare animal protection organisations. Open Rescue has therefore allowed new welfare groups to advocate in a way which differentiates them from old welfare organisations.

Animal Liberation organisations are most likely to be classified as new welfarist according to the principles outlined above. They are more progressive than the RSPCA,
yet many of the organisations do negotiate for welfare reform. However, Animal Liberation Victoria (ALV) is noteworthy because it has worked hard to move beyond new welfarist concepts. ALV strongly promotes itself as an animal rights organisation and states on its website that it seeks to abolish, not regulate, ‘institutionalised animal exploitation’ (Animal Liberation Victoria ndc).

The final significant episode in the development of the Australian animal protection movement is associated with the publication of Tom Regan’s defence of animal rights. However, although a watershed in animal protection theorising, *The Case for Animal Rights* did not have the same impact on the Australian animal protection movement as *Animal Liberation* had. Although rights discourse has become more influential in Australia since World War II, and the term ‘animal rights’ is being used by activists and the media with increasing frequency, there are few strict animal rights organisations in Australia. In the 1980s the Vegan Society was founded. That organisation no longer has a strong animal rights orientation, but at the time of its formation its aim was to progress the animal protection agenda beyond a welfarist paradigm. The strongest Australian voice for animal rights in recent times has come from the online journal *Abolitionist-Online*, founded in 2005 by Claudette Vaughan. Among other things, Vaughan has been critical of PETA for identifying itself as an animal rights organisation while pursuing a new welfare agenda. She writes:
Apart from the traitorous act of killing non-human animals in their charge,74 which is bad enough, if PETA had marketed themselves initially as a welfare organisation nobody probably would have batted an eye-lid about this latest debacle because that’s what’s expected in the sordid killing grounds of animal welfarism. Keep non-human animals fed and sheltered up until the time they are killed ‘humanely’ (Vaughan 2005a).

*Abolitionist-Online* was developed as a forum where the animal rights view can be articulated and differentiated from other more conservative animal protection ideologies.

*The Animal Protection Community and the Perceived Link between Visibility and Cruelty*

It is not difficult to find examples of Australian animal advocates who claim there is a link between low visibility and animal suffering. In an article about the campaign by Australian animal protection organisation Voiceless to oppose intensive pig farming, it was reported that the organisation ‘is trying to lift the veil of secrecy for pork consumers’ (ABC Rural 2005). In another article on the same issue, Voiceless co-founder and Director, Brian Sherman, was quoted as saying that intensive pork production units ‘are akin to battery-caged chickens yet the public is largely unaware of this unfolding animal tragedy’ (AAP 2005). Furthermore, in the report the news articles were based on, Voiceless claims that ‘[t]his revolution [the shift towards intensive pig production in Australia] has been staggering and almost invisible to the Australia public.’ It further

---

74 Vaughan is referring to an incident in 2005 in which PETA staffers were accused of animal cruelty after they were observed obtaining companion animals from shelters, killing them, and disposing of the animals’ bodies in dumpsters.
claims that ‘[p]roduction is hidden from public scrutiny inside enormous prison-like sheds. This report is designed to give consumers the facts and lift the veil of secrecy over what goes on behind these closed doors’ (Sherman et al. 2005:1). Underlying all such claims is an assumption that if people were aware of how pigs live in factory farms they would oppose such farming methods. Indeed, the report’s authors claim as much when they argue that ‘Voiceless believes that as consumer awareness increases, cruel pig industry practices will no longer be accepted’ (Sherman et al. 2005:1).

Likewise, Animal Liberation NSW claims in a flyer about the racing industry that:

[M]ost of them [thoroughbred horses] will either die in the course, in training, or be killed because they are no loner profitable. This sad and unconscionable reality is hidden behind a veil of secrecy and shame (Animal Liberation NSW ndb).

Indeed, many progressive animal protection organisations appear to perceive their primary function as informing the broader community about the conditions under which animals live and die in factory farm, fur farms, research laboratories, abattoirs, and anywhere else not readily visible to the public. As Animal Liberation NSW asks about mulesing:

\[75\]

---

\[75\] Mulesing is a process where skin is cut away from around the anus and tail of sheep. When the area heals it produces scar tissue which protects against flystrike. Flystrike occurs when a fly uses a sheep as a host within which to lay eggs.
Can you imagine the public outcry if someone grabbed a *dog* and sliced away skin and flesh the size of a dinner plate from around its anus and tail with a pair of shears and without anaesthetic?

Well Australian protection laws, whilst prohibiting such cruelty on companion animals, allow this gory primitive act to be carried out on millions of sheep each year (Animal Liberation NSW ndc original emphasis).

Such language taps into economic arguments concerning the inconsistent nature of animal protection laws, namely that mulesing is necessary in order to allow farmers to extract profit from sheep. But the claim that a ‘public outcry’ would ensue if a dog was mulesed is particularly interesting. A public outcry in response to a dog being mulesed is a conceivable scenario. However, it prompts several questions: would the outcry occur because Australians particularly like dogs; would it occur because there is no perceived need for dogs to undergo mulesing; or would it occur because mulesing itself is offensive? The flyer’s authors seem to believe the latter. This is evidenced by their apparent belief that by telling people that mulesing is taking place it will be opposed. Furthermore, the authors also draw on arguments based on the notion of equal consideration by suggesting that dogs and sheep are equally capable of suffering and therefore equally deserving of protection before the law. Presumably they hope their audience will agree.

However, it is not only animal advocates who have identified a link between visibility and the way animals are treated. At times animal users also utilise arguments built on the
perceived existence of such a nexus. This is done by claiming that animal advocates manipulate the low visibility status of some animals to their advantage by falsifying the reality of the way animals are maintained and killed. Such commentators argue animal advocates do so in order to incite opposition to the animal industrial complex. For example, Australian pork growers’ peak body, Australia Pork Limited, responded to the Voiceless pig campaign referred to above by asserting that ‘[g]roups such as these prey upon the ignorance of city kids with no real connection to the land, filling their heads with nonsense’ (AAP 2005). Animal researchers have often made similar claims. For example, writing in the journal BioScience, two animal researchers urged their colleagues to ‘educate themselves about the movement and also educate the public about biological research’ because ‘animal rights activists play off public ignorance’ (Miller and Strange 1990:431).

In the following section the findings from interviews with individuals actively involved in the Australian animal protection movement are presented. The interviews were undertaken in order to better understand how Australian animal advocates conceptualise inconsistencies in animal protection laws. A full list of questions is available as Appendix II. Of the nine questions asked, three established the interviewees’ history within the movement; one asked interviewees to express what they see as the fundamental problem underlying animal suffering; one asked whether animal welfare laws are inconsistent and, if they are, which animals benefit from them and why; one asked whether they feel the wider community is aware of how animals are treated; one asked which type of animal interviewees would choose to be if they were to be an animal from the groups identified in Figure I; and the other two questions asked what they would like to see done to
improve the lives of animals. In order to capture a range of views, interviews were sought with advocates from across the spectrum of the animal protection movement.

Interview Methodology

All interviewees were approached either in person or by email in the first instance. Interviewees were selected based on their association with a particular type of animal protection agency or employment with the animal protection bureaucracy. All the people approached were personally known to me, with the exception of the World Society for the Protection of Animals (WSPA) representative. WSPA was contacted by sending an email to the general email address provided on its website. In all cases, in the first instance I asked whether the person I was approaching, or another individual from the organisation they represented, would agree to be interviewed. In cases where I received no response, or a negative response, no further contact was sought. In cases were I received a positive response I arranged an interview time. In cases where I received a request for further information I wrote back with more detailed information. In one case I was asked for a copy of the questions, which I sent. In cases where the additional

---

76 My associational links are as follows: I am a member of the NSW RSPCA, the NSW Animal Welfare League, the World League for Protection of Animals and Animal Liberation NSW. I was employed by the World League for Protection of Animals as their office manager for a period of 18 months. I do some limited ongoing volunteer work for the World League for Protection of Animals and Animal Liberation NSW. At the time of writing I am the Animals in Research division representative with Animals Australia. I sat on the NSW Animal Research Review Panel for three years. On that Panel I represented the NSW Animals Society Federation. Finally, I have ongoing teaching responsibilities with the University of Sydney’s Discipline of Veterinary Science and the University of Sydney’s Laboratory Animal Services.  

77 I would have also liked to interview a representative from the NSW Animal Welfare League. However, I had previously approached the NSW Animal Welfare League with a request for assistance with other research activities. After an initial conversation with the NSW Animal Welfare League’s CEO, I was unable to establish further contact with her. I therefore did not approach the NSW Animal Welfare League and request an interview as I thought it unlikely the organisation would cooperate.
information was accepted I arranged an interview time. In cases where it was not, no further contact was sought.

A dictaphone was used to record all interviews. In each case interviewees were asked the same questions in the same order. The only variation occurred in cases where the participant was a member of the animal protection bureaucracy, in which case the word ‘movement’ was excluded. The proceedings were then transcribed and a copy of the transcript was sent to participants for their records.

Table I shows the type of organisations the interviewees were drawn from. Appendix III elaborates on why organisations are classified in the way they are. However, instead of limiting interviews to individuals from organisations associated with the three animal protection ideologies – old welfarism, new welfarism and animal rights – interviews were also sought with individuals employed in what is broadly referred to as the ‘animal protection bureaucracy.’ The animal protection bureaucracy includes people whose task it is to implement animal protection regulations on behalf of the state, or within some other institutional setting. The reason individuals from the animal protection bureaucracy were interviewed was that old welfare organisations have close institutional links. That means it is arguably artificial to exclude the views of those employed full-time to regulate animal use, and provide for animal protection. Such people have well-developed views on animal protection and many consider themselves to be actively involved in animal protection advocacy through their institutions. An expanded animal protection political continuum is therefore employed in this study. It looks like this:
<table>
<thead>
<tr>
<th>New Welfarism</th>
<th>Animal Rights</th>
<th>Old Welfarism</th>
<th>Animal Protection Bureaucracy</th>
</tr>
</thead>
</table>

The table presented below is designed to enable the reader to identify where the Australian animal protection organisations approached for this research fit into the animal protection continuum.
### Table I: Locating Interviewees along the Animal Protection Continuum

<table>
<thead>
<tr>
<th>Interviewee</th>
<th>The organisation with which the interviewee is primarily associated</th>
<th>The organisation’s position along the animal protection continuum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number 1</td>
<td>NSW Animal Research Review Panel</td>
<td>Animal Protection Bureaucracy</td>
</tr>
<tr>
<td>Number 2</td>
<td>Animal Welfare Unit, NSW Department of Primary Industries</td>
<td>Animal Protection Bureaucracy</td>
</tr>
<tr>
<td>Number 3</td>
<td>University of Sydney</td>
<td>Animal Protection Bureaucracy</td>
</tr>
<tr>
<td>Number 4</td>
<td>NSW Royal Society for the Prevention of Cruelty to Animals</td>
<td>Old Welfare</td>
</tr>
<tr>
<td>Number 5</td>
<td>World Society for the Protection of Animals</td>
<td>Old Welfare</td>
</tr>
<tr>
<td>Number 6</td>
<td>Help in Suffering</td>
<td>Old Welfare</td>
</tr>
<tr>
<td>Number 7</td>
<td>NSW Young Lawyers Animal Rights Committee</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 8</td>
<td>Animals Australia</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 9</td>
<td>Animal Liberation NSW(^{78})</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 10</td>
<td>Animal Liberation NSW</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 11</td>
<td>Voiceless(^{79})</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 12</td>
<td>Voiceless</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 13</td>
<td>World League for Protection of Animals(^{80})</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 14</td>
<td>World League for Protection of Animals</td>
<td>New Welfare</td>
</tr>
<tr>
<td>Number 15</td>
<td>Australian Association for Human Research</td>
<td>Animal Rights</td>
</tr>
<tr>
<td>Number 16</td>
<td><em>Abolitionist-Online: A Voice for Animal Rights</em></td>
<td>Animal Rights</td>
</tr>
</tbody>
</table>

---

*Animal Protection Regulation and the Inequitable Treatment of Nonhuman Animals*

Participants were asked whether they thought animal welfare legislation treats all animals fairly. Most thought it does not. One interviewee from the animal protection bureaucracy argued that the standards for research animals are higher than those for Agricultural Animals. He argued that common animal agricultural practices such as the housing of

---

\(^{78}\) In the case of Animal Liberation NSW, one interviewee was a volunteer member of the board of directors and the other was an employee.

\(^{79}\) The Voiceless participants held very different positions within the organisation.

\(^{80}\) In the case of World League for Protection of Animals, one interviewee was a volunteer member of the board of directors and the other was an employee.
hens in battery cages and the mulesing of sheep would be unlikely to receive animal ethics committee (AEC) approval. The same interviewee also asserted that, as a general principle, Research and Education Animals receive superior housing than do Agricultural Animals. Another respondent from the animal protection bureaucracy shared the view that the law treats some animals better than others and that Research and Education Animals are well catered for. That respondent also claimed that economically productive animals were unlikely to receive protection over and above that required by law because competition dissuades producers from lifting their welfare standards above the legal minimum standard. An interviewee from a new welfare organisation also thought Research and Education Animals are more strongly protected than some other categories. She said that ‘the highest legislative protection is probably, at least on paper, animals in research. That is, the laws related to them are fairly stiff and the management around it is fairly stiff.’ The same respondent argued that introduced wildlife are treated ‘just terribly.’

One of the respondents from an old welfare organisation shared the view that the economic bottom line places limitations on the protection afforded certain animals. When asked which animals fare better under current arrangements, the respondent identified those introduced species perceived to be an ecological threat as those afforded the lowest standard of protection. One new welfare respondent was also of the view that introduced wildlife are poorly protected. However, she also pointed out that some native wildlife are similarly afforded weak interest protection. This is especially so with animals that have been commercialised, or in cases where free-living animals complete with Agricultural
Animals for resources. Another participant drawn from a new welfare organisation also expressed the view that commercialised wildlife are poorly protected. She stated that ‘once the commercial industry is established and there’s a profit motive you know the whole thing sort of goes downhill very fast and I think that’s terribly cruel.’

Among the other respondents it was common to argue that animal protection arrangements are not consistent and that Companion Animals tend to receive preferable treatment. In total, 11 of the 16 respondents claimed that this is the case. That included all those associated with new welfare organisations, two of the three old welfare representatives, and one animal rights advocate. One respondent from an old welfare organisation argued that ‘if we kept dogs in the state that we keep pigs in a pig farm in, there’d be prosecutions happening. But pig farmers just close the doors and hope for the best and get away with it.’ Another stated that ‘[t]here’s a total dichotomy between the animals which are used for food and the animals which are companions.’ And a new welfare representative argued that ‘obviously the best treated animals are our companion animals because no-one wants to see their pet hurt or violated or exploited or abused, so they are the only ones that we give care and consideration to.’ However, some respondents also expressed the view that although Companion Animals are treated in a preferential manner, the statutory protection they receive is not always adequate or problem-free. One respondent from a new welfare organisation stated that ‘even though there are obviously problems that companion animals face, but if you look at the scale, if you are looking at animal protection legislation, then companion animals would probably have the best protection.’
One interviewee associated with a new welfare organisation stated that Agricultural Animals and Research and Education Animals receive the worst legislative protection. However, the more common view was that free-living introduced animals and animals used in agriculture are the worst served by current laws. Ten respondents identified Agricultural Animals as the category of animal most poorly protected by anti-cruelty arrangements.

One interviewee employed in the animal protection bureaucracy stood out as the only respondent to be of the opinion that animal statutes are not preferential towards some animals. He stated that ‘I think it [the law] attempts to treat animals as fairly as it can given the current public perception of animals and the way they’re used and our relationship to them.’ However, he conceded that ‘there is the opportunity perhaps to review some aspects of the legislation to make it more effective than it currently is.’ But in order to do that, he argued ‘there would need to be a change in public perception, and a public point of view in order to support that.’ One animal rights advocate also offered a markedly different response to the rest of the group. She argued that all animals are property items and are therefore equally vulnerable to cruelty.
The majority of all respondents were of the view that animal protection arrangements are inconsistent. Indeed, some strongly asserted that this is the case. When asked why they believe inconsistencies occur, many of their responses were economic or instrumental in nature. For example, one new welfare representative argued that Agricultural Animals are one of the categories of animals treated poorly by animal protection statues. She went on to say that ‘[i]t seems to me that the fundamental test is still – despite the wording of cruelty statutes – what is convenient and cost effective practice for production animals.’ Another new welfare representative argued that the reason animal protection statutes contain large exemptions for Agricultural Animals is that such exemptions allow farmers to ‘produce the animals, that is the products from the animals, at a much reduced rate.’ The same respondent argued that farmers are able to achieve economically favourable statutory arrangements because ‘the rural lobby has considerable political say in Australia.’ Another new welfare representative viewed the issue as economic, but also tied it to the effectiveness of enforcement. She stated that ‘they [farmers] are given a whole lot of leeway with overstocking and that kind of thing and the RSPCA can only prosecute occasionally anyway.’

The same pattern was also repeated in response to the question, ‘What do you see as the fundamental problem facing animals today?’ In answering that question 11 respondents offered answers that tapped into economic imperatives. One old welfare representative responded by stating that ‘people are greedy for money and animals are treated as
commodities to be exploited rather than each animal being considered as the experiencing subject-of-a-life.’ A new welfare advocate argued in response to the same question that ‘they [animals] are perceived with a “What can they do for me?”-type attitude instead of being seen as being sentient individual beings.’

However, a range of other explanations to account for inconsistencies were also offered. One representative from an old welfare organisation explained that humans form a hierarchy in their minds, for example ‘if you talk to people about a cow versus a dog, the average person will say, “Oh, dogs are much smarter and they are much more able to bond with humans.”’ She argued that such thought patterns are ‘a personal intentional delusion… in order to justify eating a hamburger.’ Eleven respondents provided answers which suggested humans construct self-justification arguments which allow for inconsistent treatment of different animals. However, many such arguments also had economic overtones to them. For example, when asked why some animals are better protected than others, one new welfare participant responded by saying, ‘It suits human needs and human greed – it suits humans the way they want to judge and look after them and decide which ones to protect and which ones not to protect.’ Another argued that ‘humans have a great difficulty reconciling their interests and affection towards animals, or individual animals or particular types of animals, with things that they have spent their life learning to do without thinking about it for their own convenience, an example being eating animal products.’
Yet despite 11 of the 16 respondents engaging with economic arguments at some point throughout the interview, 13 respondents also offered visibility-based explanations to account for why some animals are vulnerable to cruelty. This occurred most often in response to the questions ‘How aware do you think members of the wider public are about the way we treat animals’ and ‘What do you see as the fundamental problem facing animals today?’ Overall, more interviewees drew on visibility arguments than economic arguments.

The use of visibility arguments was most common among respondents drawn from new welfare organisations. Such a result is not surprising given many such organisations tend to focus on low-visibility animals, and are also likely to identify their mission as raising the level of visibility of such animals. However, within the new welfare group, one respondent stood out. Whereas most new welfare respondents explained inequities between different categories of animals via reference to a combination of economic and visibility arguments, one respondent relied entirely on a visibility framework and did not engage in a debate concerning market forces at all. When asked what she sees as the fundamental problem facing animals today, the respondent said, ‘It is not seen in the public that our treatment of animals behind closed doors leads to an out-of-sight, out-of-mind phenomenon whereby people can ignore the realities of what the animals are going through.’ The same respondent was of the view that Companion Animals receive the best treatment under anti-cruelty laws and Agricultural Animals receive the worst. When

\[81\] An analysis of which animals are low visibility, and which are not, is undertaken in Chapter VII.
asked why she thought that is the case she said that ‘people have everyday experiences with companion animals… [but] there’s also no reason for the people who are running intensive animal agriculture operations to show footage, or invite people into their facilities.’ When asked what animal advocates should do to aid animals, she answered, ‘I think becoming informed and deliberately find out about the conditions that animals are treated in and then informing others.’

The view that there exists a significant degree of ignorance concerning how some animals live and die was expressed by respondents from all sections of the animal protection movement and bureaucracy. One respondent from the animal protection bureaucracy argued that ‘[people are] probably not terribly aware for the most part of some of the issues for some of our livestock, and I don’t think that they’re very aware of some of the issues for animals in research. Maybe a little bit more aware of some of the issues for animals that are in establishments where they are exhibited. But the majority of people wouldn’t know necessarily all of the issues that affect those animals either.’ One respondent from an old welfare organisation claimed that ‘because factory farms operate behind closed doors and don’t encourage people to look at them, we’re not very aware of the conditions that farmed animals live in.’ A new welfare participant stated that ‘I don’t think there’s a good understanding of what actual common farming practice involves.’ Another said, ‘I don’t think people understand first how much animals can suffer or how they do suffer, and I don’t think many people realise the conditions that many thousands, millions, of animals are in. Much of it is behind closed doors, whether that be farmed animals, animals for cosmetics or animals for medical research… you hear more concern
about issues that are in the public arena such as rodeos, circuses and things; this really only represents a very small number of animals that are exploited.’ And an animal rights advocate argued that ‘[people] are not aware of the suffering – you know, of how those animals live and what circumstances they had to go through to provide that product to us. Animals in research particularly are kept away from public scrutiny because the public are led to believe that they are used to benefit us, but the research community do everything in their power to actually hide what’s happening to them.’

However, the link interviewees identified between visibility and animal cruelty was not necessarily direct or linear. It appears that in the minds of many interviewees it does not directly follow that because some animals have low visibility they are less likely to be protected from harm. Although some participants argued that farmers and/or researchers and/or the state actively seek to hide the reality of animal suffering, most respondents were of the view that it is actually people in the community who actively seek to deny animal suffering, remain ignorant, or develop intentionally self-delusionary arguments intended to justify their own involvement in activities that cause animals to suffer. For example, one new welfare respondent said, ‘I think that people on the whole think that animals are treated really well. I think they’ve got their blinkers on and are totally unaware of the reality of it.’ Another said, ‘If the wider community weren’t aware they must be living in a box.’ She went on to assert that ‘most people just don’t have time, they are too busy with their lives, they don’t have time to think about what is actually happening to their meat animals.’ Another argued that ‘there’s a very general lack of awareness … [of] even the fundamental things that everyone should know, and if they
stopped to think about it for five seconds would be aware of; [are] deliberately pushed to the back of the mind when it comes to making choices as a consumer about what you do support and what you avoid.’ In total, 11 respondents formulated arguments which indicated they believe people try to avoid knowing about animal suffering. This suggests that some interviewees are of the opinion that even if the public had persistently good first-hand experience of all sections of the animal industrial complex, they may still find ways to disavow knowledge of animal suffering. By extension, that view may be interpreted as an argument that suggests that human self-interest, economic or otherwise, trumps animal welfare concerns, even in cases where the public has good direct visual evidence to suggest some animals are suffering. Yet animal advocates, especially those drawn from new welfare organisations, persistently seek to publicise animal suffering, especially where it occurs beyond popular view. It seems likely that those who undertake such activities believe that the energy invested in that process will result in increased interest in protecting animals from harm, and that will, in turn, be reflected in animal welfare legislation. More research is needed to clarify this apparently contradictory view.

Some respondents claimed community understanding of animal suffering and animal protection issues is increasing. However, where that view was expressed it was accompanied by the suggestion that increased awareness is a direct result of the work carried out by the progressive arm of the animal protection movement. For example, one new welfare advocate stated that ‘compared to 13 years ago, when I first started, I would say that, I would say generally everybody is much – most people are much more aware of farm animal issues, particularly for battery hens and it’s shifting in that way.’
Lastly, it is worth noting that the final question put to participants was: ‘If you had to be an animal from one of the following categories: Companion; Research and Education; Agriculture; Exhibited, Sports and Gaming; or Law Enforcement Animals, which would you choose to be and why?’ Two respondents did not understand, or chose not to answer the question. Two stated they would like to be Law Enforcement Animals and the remaining group of 12 chose to be Companion Animals. That the majority chose companion animals is consistent with an interpretation of animal suffering based on economic arguments. This is because Companion Animals were the only category of non-economically productive animals respondents could choose from. However, that most people elected to be a Companion Animal is also consistent with a visibility-type analysis as Companion Animals are the animals the majority of people regularly come into contact with in a living state. However, as discussed in the next chapter, the high visibility status of Companion Animals is complex because Companion Animals primarily occupy the private sphere, meaning it is relatively easy for their owners to deny others visual contact with their Companion Animals should they wish to do so.

However, in explaining why they chose the category of animal they did, respondents did not draw on a visibility or an economically instrumental argument. Rather, most simply appeared to think that being a Companion Animal would be a good option because they themselves have a positive relationship with their Companion Animal(s). This is despite the question being specifically non-contextual and therefore inviting the respondent to imagine a worst-case scenario. Not only did 12 out of the 14 who answered the question
imagine a best-case scenario – in contrast to the response John Rawls anticipated when he conceptualised the ‘veil of ignorance’ – but respondents did not justify their response by using arguments tied to the structure of animal protection legislation, visibility, or economic imperatives. This finding may be read as suggesting that the level of care respondents believe is appropriate for animals exceeds that which is required by law. It may also suggest that respondents, like the wider community, gain most of their first-hand animal experience from Companion Animals and, in answering the question, instinctively drew on their own lives. However, more research is required in order to draw strong conclusions on the issue.

Tellingly, one of the two respondents who did not choose to be a Companion Animal was the RSPCA representative. In formulating his answer he cited instances in which he had seen Companion Animals treated poorly. He said, ‘There’s real problems with companion animals – boredom, home-alone syndrome versus they get a lot of love, they can sometimes be co-dependent… you know, I’ve had dealings with companion animal situations like hoarders, and then that’s just horrendous.’ Other respondents tended not to acknowledge that there is a risk associated with choosing to be a Companion Animal.

The task of the next chapter is to investigate whether the animal protection movement is justified in its view that there is a relationship between low animal visibility and poor welfare outcomes. This will be done by establishing which category of animal has a high level of visibility and which category of animal does not, and then comparing those findings to NSW’s primary animal welfare instruments. Furthermore, a conclusion will
be reached as to whether the strongly held view that the most favourable category of captive animal is Companion Animals is supported by evidence or not. Those tasks are undertaken in chapters VII and VIII.
Part III: Visibility and Statutory Inequality

Chapter VII: Visibility and the Lives of Animals

Introduction

In the previous chapter it was argued that animal protection legislation does not protect all animals equally. Furthermore, it was asserted that, to date, when scholars have commented on the inconsistent nature of animal protection arrangements they have tended to identify exemptions in animal protection statutes as the key enabling mechanism. Those exemptions tend to be tied to the concept of necessary suffering which allows large-scale institutionalised cruelty to occur, while prohibiting random acts of violence against animals. This trend has led some academics, and some animal advocates, to conclude that there is a link between the way humans seek to extract profit from animals, and legally sanctioned animal suffering. Such an analysis is supported by the view – commonly held within the animal protection community – that Companion Animals are the animals best served by current statutory arrangements and that this is the case because Companion Animals are not economically productive.

82 Parts of this section have been published in two separate publications: O’Sullivan (2006a) and O’Sullivan (2005c).
However, animal advocates’ critique of legalised animal suffering has not been limited to an economic analysis. During interviews conducted for this research, most respondents also drew on arguments which imply that the absence of animals from most people’s everyday experience allows cruelty to take place. Many interviewees asserted that the visual disconnection between animals and humans results in the community either being sincerely unaware of animal suffering, or it facilitates the active denial of animal suffering, even in cases where its occurrence is, or should be, known in the abstract.

This study does not seek to challenge the legitimacy of animal protection inconsistencies interpreted through the prism of economic imperatives. However, the purpose here is to tease out, and comment on, the extent to which visibility is also a factor informing how well the state protects different categories of animals from harm. To do that it is necessary to develop a comprehensive understanding of how visible different categories of captive animals are in the current social, political, economic, and legal climate. That is one of the primary tasks of this chapter and it requires a number of steps.

First, different types of visibility must be described. To that end, three categories have been identified as pertinent to the lives of animals. They are:

- Direct popular visibility – real-life, immediate, and repeated visual, auditory, and olfactory exposure to animals by those who do not have a direct property relationship with the animal or are not directly engaged in the process of extracting profit from the animal.
➢ Indirect popular visibility – visual and auditory exposure to animals via the mass media or other popular communication systems, including the internet and publicity generated by animal protection organisations.\(^{83}\)

➢ Indirect visibility via the state – animal protection inspections undertaken by the state on behalf of its citizens.

Each type of visibility carries with it strengths and weaknesses from the animal’s perspective. The nature of those strengths and weaknesses, plus other advantages and disadvantages peculiar to each, are considered below. This is done with reference to the categories of captive animals outlined in Figure I. To the best of my knowledge there is no pre-existing visibility framework which describes and critiques the different types of visibility an animal may experience. Were such a framework available it would be beneficial to this study. However, in the absence of an agreed-upon standard, one must be developed. That is the task of the remainder of this chapter. As outlined in Chapter II, the formulation of a visibility framework for captive animals is undertaken here with the assistance of a number of research and analytical tools, including my experience as a researcher, teacher, professional manager and advocate in the area of animal protection. Finally, assessing each group’s level of visibility in a transparent way is a big task, meaning this chapter is long and detailed.

---

\(^{83}\) Robert Garner argues that since the 1980s there has been a ‘growing interest in, and concern for, the welfare of animals.’ Garner believes one of the ‘crucial ingredients’ of that increased concern has been ‘the increasingly visible role played by the animal protection movement’ (Garner 1998:68). The concept of indirect popular visibility acknowledges that animal protection organisations play a significant role in creating indirect popular visibility for animals by generating media interest.
Agricultural Animals

Elizabeth Costello, the protagonist in J. M. Coetzee’s *The Lives of Animals* (1999), makes the following observation about a fictional city called Waltham:

> I was taken on a drive around Waltham this morning. It seems a pleasant enough town. I saw no horrors, no drug-testing laboratories, no factory farms, no abattoirs. Yet I am sure they are here. They must be. They simply do not advertise themselves. They are all around us as I speak, only we do not, in a certain sense, know about them (Coetzee 1999:119).

Although the conditions under which Research Animals live are also depicted as low visibility, in *The Lives of Animals* special emphasis is placed on the invisibility of Agricultural Animals. Coetzee is not the only commentator to assert that modern animal agricultural systems render many animals invisible in a direct popular sense.

In *Dominion: The Power of Man, the Suffering of Animals, and the Call to Mercy* (2002), Matthew Scully opens the chapter on modern animal agriculture with the following personal account:

> Standing outside a factory farm, the first question that comes to mind is not a moral but a practical one: Where is everybody? Where are the owners, the farmers, the livestock managers, the extra hands, anybody? I have been driving around the North Carolina countryside on a Thursday afternoon in January 2001, pulling in at random to six hog
farms, and have yet to find a single farmer or any other living soul… There are so many factory farms around here that they are easy to miss. I doubt that the average visitor just passing through even knows what they are (Scully 2002:247).

Factory farms are described in the *Encyclopaedia of Animal Rights and Welfare* (1988) as ‘common… [but] usually socially invisible’ (Waldau 1998:168), a view with which author Michael Pollan concurs. In *An Animal’s Place* (2002), Pollan dedicates considerable space to critiquing the disconnect between modern humans and the animal food they eat. He asks:

> When’s the last time you saw a pig? (Babe doesn’t count.) Except for our pets, real animals – animals living and dying – no longer figure in our everyday lives. Meat comes from the grocery store, where it is cut and packaged to look as little like parts of animals as possible. The disappearance of animals from our lives has opened a space in which there’s no reality check, either on the sentiment or the brutality (Pollan 2002).

Pollen’s view is shared by others, including some linked to the animal agriculture sector. Emeritus Professor of animal agriculture, Peter R. Cheeke sees value in industrial animal agricultural practices and rejects a sentimentalised interpretation of pre-industrial farming. However, despite that, Cheeke echoes some of the sentiments expressed by animal advocates interviewed for this research, including the view that Agricultural Animals have a low visibility status which facilitates ignorance. He writes:
Most people who eat meat don’t think too deeply about all the processes involved in converting a living animal to meat on their plate. The farther one is removed from agriculture, the easier it is not to think about this issue. One of the best things modern animal agriculture has going for it is that most people in the developed countries are several generations removed from the farm and haven’t a clue how animals are raised and ‘processed’ (Cheeke 2004:332).

Commentary which suggests that Agricultural Animals are not persistently visible to the majority of the population living in the developed world is well-supported by evidence. For example, a 2005 report authored by the Australian Government’s Department of Agriculture and Fisheries observed that:

A difficulty for the farm sector in its relationship with the broader community is that of communication. As Australia becomes more highly urbanised and its economy more diversified, the community at large is steadily becoming less connected with agriculture and losing some understanding of the thinking behind how farmers run their business (Department of Agriculture, Fisheries and Forestry 2005:20).

The proposition that there is a significant rural/urban divide in Australia is further supported by research commissioned in 2006 which found that ‘60 per cent of people in cities have little or no understanding of what happens on farms’ and ‘one in every three city people have never visited a farm’ (Plate 2006). Among developed countries, Australia is not unique in this sense. For example, in 1991, in the United States, 75 per cent of the population lived in an urban environment. Of the remaining 25 per cent, only
two per cent were involved in farming (Rowan 1993:29). Andrew N. Rowan, Director of Tufts University’s Centre for Animals and Public Policy, argues that although the majority of the population have lived in urban centres for some decades, there is something particularly alienating about contemporary farming arrangements:

[T]he current generation (consisting of baby boomers and younger) is much less likely to have had farm experience or contacts with family members who lived on farms than their parents. In addition, the post-war era had brought many changes in food processing and packaging, so that it becomes increasingly difficult to associate meat with the animals it comes from. Shopping at a butcher shop was a very different experience from picking up cellophane-wrapped packets of meat in a supermarket (Rowan 1993:29).

The absence of Agricultural Animals from most people’s daily experience is further extenuated by the use of intensive agriculture systems which house animals inside, either permanently or for long periods of time. The use of industrial housing systems means that even when urban dwellers pass through rural communities they are unlikely to be directly exposed to Agricultural Animals. Furthermore, any animals that are visible from the road are likely to be maintained as part of small-scale farming operations – often referred to as hobby farming. Hobby farms do not generate the large amount of standardised agricultural product used to feed large communities.

In Australia, the urban majority’s primary opportunity to have direct visual, auditory and olfactory exposure to Agricultural Animals occurs within the context of agricultural shows which are conducted annually across the country. The largest such show is the
Sydney Royal Agricultural Show (hereafter referred to as the Show). It runs for 14 days and on its website it claims to attract around one million patrons annually (Royal Agricultural Society of NSW 2006).

In 2004 I visited the Show to assess how representative it is of standard agricultural practices. I had not attended the Show since childhood. During the course of my visit I formed the opinion that the farm practices on display at the Show reinforce the stereotype of extensive agriculture, and do not accurately reflect the living or handling conditions experienced by the majority of Agricultural Animals who are raised in intensive agricultural systems. Although many animals on display were housed indoors, most were in large enclosures which allowed for significant freedom of movement. Many animals were housed with companions and most were in highly enriched environments including enclosures with large quantities of clean straw and other nesting material. The animals were also attended to by unrepresentatively large numbers of people. It was not uncommon for one or two people to be responsible for three or four cattle or five to ten sheep. This stands in contrast to statistics compiled by animal advocate and author Christine Townend which show that in Australia in the 1980s, on average one human was caring for 2,000 sheep (Townend 1985:36). More recent data is not available, however it is likely the ratio of sheep to human workers has either remained the same or increased.

All animals on display at the Show appeared to be in very good health. This may not be surprising given the nature of the event. The Show’s website states that:
The magnificent Grand Parade showcases close to 1,000 of the finest livestock competing at the Show. Prize-winning alpacas, cattle and horses parade alongside goats, pigs and sheep in spectacular formation (Royal Agricultural Society of NSW 2006).

Furthermore, I did not observe any of the animal agricultural practices commonly considered objectionable by progressive animal advocates. However, although none were actually conducted at the time, in some cases objectionable procedures may have already taken place, or their status was unknown. Where they had already occurred it is impossible to know whether they had been undertaken with analgesic or not. The sheep I saw at the Show had had their tails removed, but they did not appear to have been mulesed. The adult pigs had had their tails removed, though whether the piglets had also had their tails clipped was not clear. It was also impossible to tell whether the pigs had had their eye teeth removed. The cattle had not been tail-clipped. Some bulls may have been de-horned, although it was unclear. The cattle did not appear to be branded. Many of the cattle were likely to have been prize breeding stock and therefore it is unlikely they had been castrated. The fowl had not been de-beaked.

I did not see animals exhibiting signs of the psychological distress or physical ailments associated with close confinement in barren cages, such as bar-biting, stereotypical behaviour, aggression towards other animals, or skin abscesses. The animals also appeared to be well-fed and most had continual access to food. Absent from the Show

---

84 Animal advocates who subscribe to a strong animal rights position as defined in the previous chapter would be likely to object to all animal uses on display at the Show as they all utilise animals as a means to human ends. However, for many animal advocates, within the context of a well-established industrial agriculture sector, there are a range of processes considered particularly objectionable.

85 For more information, see Scientific Veterinary Committee (1997) and Mason and Singer (1980).
were battery cages, broiler sheds,\textsuperscript{86} sow stalls,\textsuperscript{87} and feedlots.\textsuperscript{88} There was also no
evidence of the large scale killing of non-economically viable animals such as male egg-
laying-type chicks and male commercial dairy-type bovine. There was a miniature dairy
where small numbers of cows were milked throughout the day. However, the nature of
the milking display was such that it did not capture the elements of the dairy industry the
animal movement tends to be critical of, including the practice of separating young calves
from their mothers, tail-docking, reduced life expectancy, mastitis, lameness and the
permanent housing of dairy cows indoors. The element of the Show most suggestive of
possible animal welfare concerns was the shearing display. I inspected sheep following a
shearing performance and many were bloody where the blade had cut their skin. How
aware other patrons were of this is unclear. Animal slaughter demonstrations were not
conducted at the Show.

Beyond the artificial construct of agricultural shows, very little farming practice is readily
observable in modern-day Australia. Since few structures housing animals are visible
from the road, only incidental direct observation is possible by the non-farming
community. In Australia, and throughout the developed world, farming occurs on land
owned as private property and therefore uninvited visitors must trespass in order to see
Agricultural Animals. That presents a considerable deterrent to those without an explicit
interest in doing so. The people most likely to have an active interest in observing
Agricultural Animals’ living conditions are individuals concerned about animal

\begin{footnotes}
\item[86] Broiler sheds are shed in which chicken for eating are grown.
\item[87] Sow stalls are small pens used to house individual female pigs while they are pregnant. Sow stalls are
used in intensive agriculture systems.
\item[88] Feedlots are large penned areas in which cattle are raised for meat.
\end{footnotes}
protection, including members of animal protection organisations. Yet even if they do not feel morally bound by trespass laws, activists risk prosecution by entering farmland and factory farm buildings. At times they may also risk their personal safety if intercepted by owners and/or employees.

However, despite the risk many progressive animal protection organisations do engage in trespass on a regular basis. *OpenRescue.org* lists 142 unauthorised farm visits that are said to have taken place around the world in the period 1992–2005 (Animal Liberation Victoria ndd). It is likely that Animal Liberation Victoria’s (ALV) list captures only a small percentage of the actual instances since those who maintain the list are unlikely to be privy to the detail of all unauthorised inspections and rescues. The incidence of trespass acknowledged on the website are likely to have been undertaken by groups that have a good working relationship with ALV, or by particularly high-profile organisations. Furthermore, some animal groups may have reasons for keeping the detail of unlawful farm inspections confidential; for example, they may be undertaking a protracted investigation and may not wish the owner to be aware of their activities. My experience with the animal protection movement suggests farm inspections occur far more regularly than is implied by the 142 visits documented on *OpenRescue.org*.

Factory farms are an attractive target for animal advocates. This is partly because there is a commonly held view within the animal protection movement that animal agriculture is particularly offensive because of the large number of animals involved. In giving
evidence to the Australian Senate Select Committee on Animal Welfare, Singer argued that:

[I]f one takes the total quantity of suffering that is involved then the greatest animal welfare issue of them all is intensive farming, because of the enormous number of animals involved in it and because of the prolonged duration of the suffering that occurs (cited in Commonwealth of Australia 1990:8).

In 2003, eight million cattle, one million calves, over 13 million sheep, nearly 17 million lambs and nearly six million pigs were slaughtered in Australia (Background Briefing 2004). In the United States, around ten billion animals are killed for meat each year (Singer 2006). Lobbyist Howard Lyman (also known as the Mad Cowboy) notes that animal agriculture accounts for 98 per cent of all animal deaths in America (Lyman nd). That figure is based on data published by the United States Department of Agriculture’s National Agricultural Statistics Service. It is likely the proportion is similar throughout the developed world.

Moreover, factory farms are also an attractive target for animal advocates because of the relative ease with which they can be identified and penetrated. I have attended Open Rescues at battery sheds on a couple of occasions. I have also been inside an intensive turkey farm and a piggery. I have asked to be occasionally included in Open Rescues in order to obtain first-hand exposure to the conditions inside factory farms. Although I was not involved in planning the actions, and had no authority during the events, the experience also allowed me to directly observe the Open Rescue process. On each
occasion I travelled to a location where a specific type of farm was known to be operating. Such knowledge is often gained via informants contacting animal organisations with tip-offs, media reports, or direct observation by animal advocates. I met with others, either late at night or pre-dawn. Usually entering via the rear or side of the property, we walked across paddocks until we arrived at the structure which housed the animals. Then we either walked in, or in the case of the turkey farm, removed a small number of screws from the wall and lifted away a side panel. In each case footage was taken inside the facility. In the case of one battery farm the police were called to the farm by activists. The police arrested the activists for trespassing. Arrests were anticipated and were part of a larger media stunt. No charges were laid. Prior to the police being notified, around 30 birds were taken for veterinary assessment. The healthy animals were then taken to an animal sanctuary. Those not in a fit state were euthanised. In the case of another battery farm the primary purpose of the visit was to obtain footage. On that occasion birds were also removed. Footage taken at the battery farm was used in a story about factory farming produced by a popular current affairs program. All other footage

89 Although a colloquial term, the expression ‘tip-off’ is used throughout this section. It is used because it effectively captures the nature of the information being transmitted. Some individuals who choose to contact a progressive animal protection organisation make detailed formal complaints. However, it is not uncommon for organisation such as Animal Liberation NSW or the World League for Protection of Animals to receive brief messages from an unidentified informant simply stating that animal cruelty of a certain type is occurring at a certain place.

90 Egg-laying hens are the animals most commonly removed from factory farms by activists. There are a number of reasons why this is the case. The volume of egg-laying hens maintained in a single battery shed is so large that owners and staff are unlikely to be aware that birds are missing. Fowl are also small animals, making them easily transportable on foot and readily re-homeable. Finally, if removed from a battery cage in relatively good health, egg-laying hens can have a reasonable quality of life. This is not the case with birds grown for meat. Meat-yielding birds have significant health problems even when removed from broiler sheds and afforded veterinary care. Professor John Webster of the University of Bristol’s School of Veterinary Science argues that ‘[b]roilers are the only livestock that are in chronic pain for the last 20 per cent of their lives. They don’t move around, not because they are overstocked, but because it hurts their joints so much’ (cited in Singer 2006).
was used as an educational tool, primarily for the benefit of people already actively involved in the animal protection movement.

Because of the ease with which animal advocates can illegally gain access to factory farms, there is no shortage of imagery documenting conditions inside intensive agricultural facilities. Such footage often depicts animals in highly confined circumstances and may include images of animals with significant health problems and/or animals clearly in distress. Because of the potentially alarming nature of footage shot inside factory farms, little is ever broadcast on television. Often it is considered too graphic to be shown during prime time, which is when most current affairs programs air. Producers may also be concerned that viewers will turn off, thus affecting ratings. Such concerns are well founded. In 2006, *60 Minutes* (Australia) was due to broadcast a series of two stories on the live export of Australian sheep and cattle to the Middle East. Yet only the first story went to air. I was advised at the time, by people working on the program, that the reason the second story was not aired was because viewers changed channels or turned the television off due to the distressing nature of the images broadcast. The same problem also affects paid advertising. For example, a newspaper article in October 2006 reported that:

[A] confronting advertising campaign highlighting the plight of factory-farmed pigs has been rejected by some [Australian] women’s magazines amid suggestions that it might upset the meat industry (Lee 2006:7).
Not all animal groups support the use of Open Rescue. In September 2006, Bernie Murphy, Chief Executive Officer of RSPCA NSW, told the media that ‘extremists should be stopped from entering properties’ (ABC Rural 2006). Murphy said:

They go onto a property, they breach the biosecurity, they may visit great harm on the well-being of the animals plus of course they are having an impact on people’s livelihoods.

No one would tolerate someone invading someone’s house and this is similar to that in a business sense (cited in ABC Rural 2006).

However, the RSPCA has not been entirely consistent on this matter. Although the RSPCA does not explicitly or implicitly advocate unauthorised farm visits, RSPCA Australia’s ‘Fair Go for Animals’ campaign has run advertisements featuring images of animals inside intensive agricultural systems. It is unclear where the images came from unless they were not obtained by animal advocates trespassing onto private property.

Under the NSW Prevention of Cruelty to Animals Act 1979 (POCTAA), the NSW RSPCA, the NSW Animal Welfare League, and the NSW Police have authority to investigate reports of animal cruelty or legislative breaches. That authority extends to agricultural land. However, inspections are only undertaken in response to animal welfare complaints. Owners and operators of agricultural land do not have to be licensed on animal welfare grounds and, in NSW, no random or periodic inspections are made by the Department of Primary Industries (DPI), the RSPCA, or any other statutory authority.
NSW has an Animal Welfare Advisory Council (AWAC) but its role is to advise the Minister for Animal Welfare (who is concurrently the Minister for Agriculture) on animal welfare matters. The Minister may accept or reject that advice as he/she sees fit.

In the case of animals in factory farms, the number of people without a pecuniary interest able to directly observe the animals is limited. The 2004–05 complaint statistics from the NSW RSPCA’s inspectorate show that while 15,562 complaints were made in relation to dogs, only 512 were made in relation to fowl (RSPCA NSW ndb:12–13). In NSW around 3.8 million fowl are maintained by egg-growers, and in 2004/2005, 422.8 million chickens were slaughtered for meat across Australia (Australia Chicken Meat Federation 2006). In 2002, there were 3,972,000 registered dogs living in NSW (Petnet nd). This suggests that a disproportionately small number of animal welfare complaints pertain to Agricultural Animals.

Furthermore, because of the large number of animals maintained in a single factory farm, there is also reason to doubt the extent to which intensively reared animals are visible even to staff members. It is common for a single battery shed to house around 50,000 birds. For an operation to be commercially viable it is likely to have five or more sheds. The level of daily, close attention received by each of the 250,000 birds living at a commercial egg-laying farm is likely to be low.

---

91 The RSPCA correlates its inspectorate data by species and not by industrial use. However, dogs are predominantly maintained as Companion Animals and fowl are overwhelmingly maintained for agricultural purposes.

92 It is unclear what proportion of that total number was raised in NSW.
Aside from the practice of housing animals inside, a significant obstacle to the reporting of animal welfare problems in Australian is the vastness of the continent. Townend describes the space employed by the Australian sheep industry in the following way:

If you have ever been driving through some of the low rainfall areas of Australia you might have driven along an unsealed road, through an enormous paddock without fences, and seen a flock of big Merinos run from the car as you approached. You might have searched for the homestead, or some other sign of human habitation, such as a utility or horse and rider, but have seen nothing to indicate the proximity of any shepherd. In outback Australia, because not many sheep can be run per hectare, the paddocks are large and inaccessible, there is no veterinarian on hand, and even inspection by the grazier is a major task. During summer the heat is stifling, the flies are bad, and because of the size of the paddocks, it could take a day’s work or more to yard the sheep. In any case the sheep do not often come in contact with humans (Townend 1985:35).

A further obstacle to the lodgment of animal welfare complaints in Australia is the sense of mateship felt by many people living in rural communities. The concept of ‘mateship’ is important to Australian cultural identification. In practice this means that members of small communities may be reluctant to report animal welfare concerns in cases where a neighbour may be implicated, and the RSPCA does not act on anonymous complaints. When a complaint is lodged with the RSPCA the complainant is required to provide their name, address and phone number, details concerning the alleged act of animal cruelty, who perpetrated it, and where. The NSW DPI states on its website that a complainant’s
details will be ‘kept in the strictest confidence’ (NSW DPI 2005c). However, in the case of a prosecution, the identity of a complainant may become known. Furthermore, some may fear neighbours will guess the source of a complaint, despite assurances of anonymity. This is likely to be felt most acutely in sparsely populated communities.

If a complainant wishes to report an animal welfare concern, yet also remain anonymous, he/she may seek to lodge his/her complaint with an animal protection organisation not empowered under POCTAA. This occurs regularly and the practice was formalised in early 2004 when Animal Liberation NSW established a free call number for the specific purpose of encouraging members of rural communities to anonymously report incidents of animal suffering. The free call number is publicised via paid advertisements in the rural press. By October 11, 2006, 383 complaints had been lodged using the service. Of them, 80 per cent pertained to agricultural systems where animals are kept outdoors, including hobby farms; 17 per cent have been in relation to Companion Animals, including equines; eight complaints have been in response to conditions at feedlots; two pertained to practices during hen shed de-populations; and two were in reference to conditions inside piggeries. These figures also highlight the invisibility of factory-farmed animals because the majority of complaints pertain to animals housed outdoors. In total, five per cent of complaints were found to be vexatious or unfounded. The three issues of concern most commonly raised by complainants were insufficient shelter, insufficient feed, and failure to provide veterinary treatment to sick or injured animals (Pearson, personal communication, October 11, 2006).

93 Hen shed de-population is the process whereby the shed is cleared of animals and the hens are taken for slaughter.
Complaints pertaining to animals housed outdoors on small properties tend to be made by people who have repeated direct visual contact with the animals from public land, such as neighbours or other members of the local community. Animal Liberation NSW, and comparable organisations, can investigate such complaints with relative ease. By contrast, complaints in relation to animals maintained in factory farms are most likely to be made by former employees or contractors who visit the farm for a specific purpose. In some instances where the welfare concerns are particularly serious, the information may be passed on by a current member of staff (Pearson, personal communication, October 11, 2006).

If a progressive animal protection organisation not empowered under POCTAA receives information pertaining to a particular animal welfare concern, and is able to undertake its own investigation by having volunteers illegally enter the facility and document conditions, it will often do so. In cases where the complaint pertains to a particular animal, or general housing conditions, this is done with relative ease. However, if the complaint relates to breaches of POCTAA alleged to be occurring during animal processing, gathering evidence is more difficult and it may require a volunteer to seek employment with the producer. If that is not possible, in some cases hidden cameras may be used. This has occurred in the past. For example, in 1999, Animal Liberation NSW obtained video images of a worker in a Tasmanian possum abattoir. The worker was sending possums for processing while they were still conscious. The tape was forwarded to the Australian Broadcasting Corporation (ABC). The ABC’s flagship current affairs
program *The 7:30 Report* later advised the abattoir owner of the tape’s existence while preparing a story on Australia’s possum-meat export trade. In response the owner sought an interlocutory injunction to restrain the broadcast on the basis that the images may impact negatively on his business. Lawyers acting for the abattoir owner argued that although the ABC had not obtained the footage itself, it was aware it had been procured using illegal means (Lindsay 2002). The matter was heard before the High Court of Australia where a majority decision ruled in favour of the ABC (Lindsay 2002). In commenting on the ruling, Shaun McElwaine, barrister for the abattoir owner, stated ‘[w]e essentially lost the privacy point because I acted for a company and the court said that the information wasn’t essentially private, slaughtering animals wasn’t private’ (cited in Tierney 2001).

Once a progressive animal protection organisation has made a preliminary investigation in response to a tip-off, any acquired evidence is usually handed over to a statutory authority. It is unlikely evidence gathered by a progressive animal protection organisation using illegal means could be admitted into court as evidence. Initial investigations are therefore undertaken either to publicise an issue, or demonstrate that an animal welfare breach is taking place and is worthy of formal investigation. When progressive animal protection organisations hand matters over in this way, they become the informant.

In most cases the RSPCA will be notified in the first instance. However, there is a perception among some animal activists that the RSPCA is more responsive to

---

94 It is not clear that this principle has been adequately tested in an Australian court of law.
Companion Animal issues.\textsuperscript{95} This occasionally results in the police being notified. Under the 2005 revision of the NSW \textit{Prevention of Cruelty to Animal Act 1979}, the NSW RSPCA does not have automatic power of entry, although previously the organisation did have greater power in that area.\textsuperscript{96} If the RSPCA wishes to pursue an animal welfare complaint involving an Agricultural Animal, it may seek permission from the owner to enter the premises. If permission is denied, the RSPCA may seek a warrant from a magistrate.

The RSPCA is a private philanthropic organisation. It is under no obligation to act in response to an animal welfare complaint. On September 27, 2006, Mark Parnell, a member of South Australian’s (SA) Legislative Council, called for an inquiry into the administration of SA’s anti-animal cruelty statute. He argued that:

\begin{quote}
One of the terms of reference [of the proposed inquiry] makes explicit the need to examine whether it is appropriate for a private charity to be the principal law enforcement
\end{quote}

\textsuperscript{95} For information concerning allegations that RSPCA Australia may at times be manipulated by farming interests, see Four Corners (2004).

\textsuperscript{96} Restricting RSPCA NSW’s access to private property has brought NSW into line with other states and the power of the NSW Police (Moore 2005). In late 2006 I spoke to NSW RSPCA’s Senior Veterinary Officer about the RSPCA’s power of entry. He advised me that the Act appears to limit the power of entry, but the precise nature of those limitations was still the subject of legal debate. Under Section 24E of POCTAA, an inspector may enter a dwelling for the purpose of an inspection if ‘an animal has suffered significant physical injury, is in imminent danger of suffering significant physical injury or has a life threatening condition that requires immediate veterinary treatment’ or if ‘it is necessary to exercise the power to prevent further physical injury or to prevent significant physical injury to the animal or to ensure that it is provided with veterinary treatment.’ Alternatively an inspector may apply for a search warrant if the inspector has reasonable grounds to believe an offence under the Act has occurred, or will occur (NSW Government 2006a). The Hon. Clover Moore MP, in a speech to NSW Parliament about the Act, interpreted the new powers of entry to mean that ‘the current unrestricted power of inspectors to enter residential premises [have been removed]. Except for an extreme emergency, consent from the owner or a search warrant will have to be sought!’ (Moore 2005). As far as I am aware what constitutes ‘an extreme emergency’ is yet to be adequately tested in court.
body under the act. There are a couple of issues that flow from that. First, the RSPCA is a private organisation, and the question has to be whether it is appropriate to delegate to a private organisation the responsibility of enforcing criminal legislation – criminal public law… The RSPCA is not under a statutory duty to investigate and prosecute breaches of the legislation, and its decisions and processes are not open to review (Parnell 2006).

The government has some recourse in that it may choose to withhold funding if it is of the opinion the RSPCA is not executing its responsibilities in an appropriate fashion. Private members may also choose to withdraw their membership.

The RSPCA also has the discretion to decide whether or not to prosecute. Because of the high cost involved, the RSPCA is limited in the number of prosecutions it can bring each year. The NSW Government grants the RSPCA $212,000 of funding annually (RSPCA NSW ndb:21), but that money provides only three per cent of the RSPCA’s national budget (Daily Telegraph 2006). This means that even where instances of animal cruelty are reported in relation to Agricultural Animals, the matter may never be heard before a court of law. Legal proceedings are one of the ways the public can garner information about the animal agricultural process.

In the absence of direct popular exposure to Agricultural Animals, it seems appropriate to assume that a considerable amount of information the general public receives concerning such animals and their treatment is generated by the mass media. In order to obtain data pertinent to the second type of animal visibility – indirect popular exposure – a month-

\[97\] That amount increased to $429,000 in 2006 (RSPCA NSW 2006:29).
long media analysis was undertaken for this thesis. The purpose of the media analysis was to gain an insight into which categories of animals are most commonly discussed in the media, and the nature of that reporting. The full results of the media analysis are outlined in Appendix IV. The results pertinent to each category of animal are discussed throughout this chapter.

Agricultural Animals were the fourth most written-about category of animal. Of the 14 stories about Agricultural Animals that appeared during the survey period, six were carried in The Sydney Morning Herald, four in The Daily Telegraph and two in each of the Sunday papers. The issue that received the most coverage over the survey period was the drought with a particular emphasis on the struggle farmers were experiencing as a result. One such story was on the front page of a weekend edition of The Sydney Morning Herald. The focus of that particular story was slightly different to that of the others in that the story reported that some rain had fallen. That story was accompanied by a large photo of a farmer on a horse. The only other picture accompanying the series of five drought-related stories was that of a farming family hand-feeding sheep in a paddock. The drought-related stories were all strongly sympathetic towards farmers. One Daily Telegraph article opened with: ‘The glorious weather is dire for farmers, who yesterday were officially told it is only going to get worse’ (Williams 2004:18). Another began with: ‘Farmers struggling to deal with continuing drought will be encouraged to leave their farms with increased payouts’ (Scala 2004:14). Two stories made mention of the impact of the drought on Agricultural Animals’ welfare. One did so by noting that stock numbers were down. That story was brief and is likely to have been written based on a
press release circulated by the organisers of ‘Casino Beef Week’ as it refers to the event as ‘[o]ne of the premier events on the state’s cattle calendar’ (The Sun-Herald 2004:16).

The other article that also mentioned the impact dry conditions were having on animals reported:

A year ago, desperate farmers trucking their half-starved stock to saleyards were turned away. Others shot them in the paddock rather than waste money on freight.

With those memories fresh, people are deciding to get out fast, selling off their animals while they’re still in good shape instead of getting deeper into debt trying to keep them alive (Williams 2004:18).

Two of the other stories were concerned with large numbers of cattle being stolen. Five stories could best be classified as ‘quirky’, incidental pieces. They include two stories about a Merino sheep in New Zealand who had not been shorn in six years. One was about a Cambodian man who electrocuted himself to death trying to stop chicken thieves. Another story reported a pledge by Australia’s federal opposition to ban the production and importation of fur products made from cat and dog. The final quirky story reported on a dairy cow who had stopped producing milk. The local vet discovered the reason was that the cow had accumulated 60 kilograms of plastic bags in her stomach.

---

98 One kilogram is equivalent to 2.2 pounds.
Of the two remaining stories, one was about a free trade agreement between Australia and the USA. The agreement has implications for agricultural imports and exports. That item mentioned animal agriculture briefly and also included a photo of a large number of cattle standing in what may have been a feedlot. That was the only photo which depicted Agricultural Animals in intensive conditions. The final story was the only one which was neither neutral towards the agricultural sector, nor actively sympathetic. It reported that Australia actor Hugo Weaving had agreed to front the animal protection organisation Voiceless. Although the accompanying photo showed Weaving with the family dog, in the article Weaving identified ‘battery hens and pigs raised in cramped quarters, along with kangaroo culling, as three key issues [that Voiceless will be campaigning on]’ (Holmes 2004:11).

The Voiceless story featuring Hugo Weaving is consistent with a reporting trend observable in the Australian media, and throughout the western world. Although it remains difficult to air graphic animal footage, including conditions inside factory farms and slaughterhouses, public discussion about the ethics of intensive animal agriculture does occur. In a 2006 interview for The 7:30 Report, when asked what had changed since the publication of Animal Liberation, Singer responded that:

Well, one thing that’s changed for the better is people are much more aware of the issues and of thinking about where their food comes from, for example. There’s a big interest in that now. And so people know more about the fact that a lot of the animal products they eat come from factory farms and they’ve started to become more concerned about that (cited in The 7:30 Report 2006).
Singer’s view was shared by a number of people interviewed for this research.

In conclusion, it may be argued that throughout the western world animals categorised as agricultural have a direct popular visibility which is particularly low. Some animals may live their entire lives without having been seen or heard by anyone other than their owner and/or their owner’s employees. Furthermore, very few people will ever be privy to the manner in which Agricultural Animals die. Agricultural Animals also have a modest indirect popular visibility. Their indirect popular visibility is enhanced by the ease with which animal advocates can document their living conditions. However, obtaining footage of the conditions under which Agricultural Animals die, and distributing that footage widely, is difficult. Agricultural Animals have no indirect visibility provided to them by the state. The state may investigate specific claims of cruelty against Agricultural Animals. However, as the animals are not readily seen, the level of reporting is unlikely to reflect the level of suffering or cruelty. No routine investigation into the living and dying conditions of Agricultural Animals is ever undertaken by the Australian Government on behalf of its citizens.
The modern animal research sector is commonly perceived by animal activists as the most clandestine commercial user of nonhuman animals. The British Union for the Abolition of Vivisection (BUAV) accuses the animal research industry of being ‘closed to public scrutiny’ (BUAV nda). That accusation has a strong factual basis. Although the animal research sector is highly regulated by the state, research facilities are not open to the public and very few people are privy to the workings of research laboratories or their governing bodies.

The primary means by which non-animal researchers may obtain information about the animal research sector is via articles published in academic journals. The process of gathering details about animal research through articles in scholarly journals places a considerable limitation on the number, and type, of people able to acquire such knowledge. Academic journals are expensive to purchase and difficult to access, especially for non-academics. Importantly, only results from a small number of experiments achieve publication. A 1965 report commissioned by the British Government found that details pertaining to only one-quarter of all animal experiments appear in print (cited in Singer 1995:41). It is likely that access to publication space has become more competitive since that time, not less. Furthermore, as Singer argues, the results that do withstand peer review are:

inevitably more favourable to the experimenter than reports by an outside observer would be… the experimenters will not emphasize the suffering they have inflicted unless it is
necessary to do so in order to communicate the results of the experiment, and this is rarely the case (Singer 1995:41).

If Singer is correct in his assessment, then, at best, academic journals allow for only a limited understanding of the research process. Additionally, academic articles are generally silent on how the animal was housed, fed, or disposed of once the experiment was complete. Moreover, publications do not provide a pathway by which interested parties may learn about research projects that either generated no results, or where the animal had an unexpected adverse reaction. Although the level of visibility achieved through the publication of research data in peer-reviewed journals is low, articles published in the mass media have a broader reach. However, the popular press carries news of only the most important peer-reviewed work and is unlikely to provide a well-rounded understanding of the animal research process.

Animal advocates regularly assert that they would like better access to detailed information about animal research. New Zealand Greens MP Sue Kedgley captured the sentiments of many animal advocates when she argued that:

each year scientists and researchers in New Zealand carry out all manner of experiments, including cloning and genetically engineering animals, on about 300,000 animals a year. Of those 300,000 over 17,000 of these animals are subjected to severe or very severe suffering.

But we, ordinary New Zealanders, or even someone like myself who is an MP
representing the public interest, have absolutely no idea what actual experiments are conducted on these 300,000 animals, or why? What happened to the 300 horses or 300 odd cats who were experimented upon last year? Did we really need to use 300 horses and 300 cats?

And was it really necessary to subject 17,265 animals to severe or very severe suffering?

We ordinary New Zealanders, have no idea because all the meetings of the Animal Ethics committees which approve experiments are conducted in secret… their meetings are not advertised, and members of the public cannot even obtain copies of the agendas or minutes of their meetings – much less the details of the experiments they approve, or the reasons for the research and experimentation (Kedgley 2002).

The animal research sector does not deny that interested third parties are prohibited from accessing detailed information about the use of animals in research. Rather, research interests often claim that information must be withheld to protect either the safety of research staff, or commercial interests. In 2004, the chair of the University of Adelaide’s Animal Ethics Committee (AEC) wrote an open letter to the animal research community urging researchers to voluntarily raise their level of public accountability (Nerlich 2004:11–12). In response, John Schofield, Director of Animal Welfare at the University of Otago (New Zealand), outlined a fictional scenario in which a university provided public access to research protocols, one of which pertained to whales. The protocol was discovered by Greenpeace. In the mistaken belief that the project was designed to force whales to beach themselves, Greenpeace used bulldozers to destroy thousands of dollars worth of research equipment. Schofield went on to ask, ‘How realistic is this account?’
He concluded that ‘[f]or those who have yet to experience the crusading vigour of an animal rights activist in full flight, it might read as far-fetched and ridiculous. But it illustrates some possible consequences of institutional transparency’ (Schofield 2004:14–15).

Yet despite such doomsday scenarios, influential sections of the animal research community are of the opinion that their level of transparency is currently low and that such an arrangement is problematic. Such voices tend to argue that a lack of public accountability can be provocative and may help fuel animal advocates. The Australian and New Zealand Council for the Care of Animals in Research and Teaching (ANZCCART), whose mission is to ‘provide leadership in developing community consensus on ethical, social and scientific issues relating to the use of animals in research and teaching’ (ANZCCART nd), convened its 2003 conference under the title *Lifting the Veil*. Following the conference a press release was issued which stated that delegates had recommended that:

- increased transparency of animal research and testing procedures would be of value to the public, and that more information should be provided as long as such disclosure does not compromise personal safety of scientists. The preferred means for providing this information is by publication of a plain language summary of all research projects approved by animal ethics committees.
- annual statistics… should provide more detail on different types of animal research, testing or teaching.
balanced information on the value and need for animal research and testing must be made available to the public at all levels (ANZCCART 2003).

Yet despite the rhetoric, transparency in animal research remains elusive, meaning the visibility of Research and Education Animals is persistently low.

In 1989, the Australian Senate Select Committee on Animal Welfare handed down a report on animal experimentation. It called for information concerning the use of animals in research to be made widely available for public consideration. The Committee stated that:

The evidence taken then [1984] made it clear to the Committee that publicly available information on the extent and nature of the use of animals in experiments in Australia was extremely limited (Senate Select Committee on Animal Welfare 1989:2).

The Committee concluded that:

All people and bodies involved in animal experimentation and in its administration and control need to be accountable for their actions, otherwise the system may be brought into disrepute (Senate Select Committee on Animal Welfare 1989:245).

At the time the Senate Select Committee handed down its findings there was a question mark over the reliability of the newly developed AEC system. The Committee noted that:
The history of ethics committees in Australia, as evidenced by the Committee, is one of varying levels of success, with some acting merely as a façade to keep authorities and the community at bay (Senate Select Committee on Animal Welfare 1989:228).

The Australian AEC system has come a long way since the 1980s and it is likely the vast majority of Australian research is approved by an AEC, which is properly constituted, and which takes the task seriously.

However, although the AEC system is more robust, it is not evident that it has increased the visibility of animals used for research and education. The structure and function of Australian AECs is outlined in the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th Edition* (hereafter referred to as the Code). It stipulates that AECs are to consist of a veterinary scientist, an animal researcher, a person with a demonstrated commitment to animal welfare, and an independent person who does not have a research background or affiliation with the research institution. It is the inclusion of an independent that is often seen as the element that allows the public to engage in the animal research process. However, beyond the involvement of the 100 or so individuals who sit as independents on Australian AECs, the ability for interested parties to learn about the detail of animal research remains restricted. A high level of secrecy is imposed on AEC members. All AEC participants are subject to institutional confidentiality (National Health and Medical Research Council 2004:12) and in NSW members of Animal Research Review Panel and others involved in administering the Act.
‘shall not disclose any information obtained in connection with the administration or execution of this Act’ except under limited circumstances (NSW Government 2005a).\footnote{99}

One of the most persistent criticisms made of the animal research sector by animal advocates during the late twentieth century was that data advising of the number of animals used in research and education was not made available to interested parties. In the 1970s, in order to formulate a picture of the number of animals used in research and education, animal advocates had to carry out their own calculations using secondary sources such as shareholder information published by animal breeding companies (Singer 1995:37). Since that time the animal research sector has moved to address that criticism and in the early twenty-first century many western governments routinely publish animal use statistics.

In NSW, all licensed animal research institutions (with the exception of primary and high schools)\footnote{100} record the number of animals they use and grade that use against a prescribed invasiveness scale. That data is then lodged with the NSW Department of Primary Industries (DPI) which produces an annual tabulated report covering all research activity in the state. The correlated data is published in ARRP’s annual report which is distributed to stakeholder groups and made available on ARRP’s website.

\footnote{99}{To the best of my knowledge, what constitutes ‘limited circumstances’ has not been tested in court.}

\footnote{100}{In Australia children attend primary school from the ages of four and a half to 12 years. Then they attend high school which they complete aged between fifteen and eighteen years. Australian schools do not use a large number of Research and Education Animals.}
Although the statistical reporting system allows the public to engage with animal research in a way previously not possible, the reporting system is not without its shortcomings. For example, the format in which the NSW data is published does not facilitate a quick interpretation of the statistics, nor does it allow casual observers to readily conclude how many animals were used in total. Furthermore, different states of Australia tabulate the data in different ways and release the information at different times. There is no national accounting system.

In 2004, animal protection organisation Australian Association for Humane Research (AAHR) developed its own national table using statistics from all available jurisdictions. They concluded that close to six and a half million animals were used in research and education in Australian states that year (AAHR nda). The organisation issued a press release commenting on the increase in the number of animals used. According to Helen Rosser, Executive Director of AAHR, the story was not picked up by any media outlet (Rosser, personal communication, October 20, 2006). In the same communication Rosser also noted that:

> While it would be anecdotal only, much of the feedback we have received about our new DVD (about to be released) has been of shock – that so many animals are used and that the research industry is of such a large scale. It has reinforced our view that very few people are aware of what is happening (Rosser, personal communication, October 20, 2006).

---

101 To see how the data is presented, see NSW DPI (2006).
Presuming the DVD contains factual information, that response also suggests Research and Education Animals have a low level of visibility.

As research facilities tend to be secure areas, the only people likely ever to have direct visual contact with the animals are those individuals working with them, or their governing body. The biggest single exception to that principle occurs in the case of school, tertiary college or university students being exposed to Research and Education Animals as part of educational programs. Such exposure meets the definition of direct popular visibility, because students are likely to have only a limited interest in the educational outcomes of the course, and none can be said to have a significant pecuniary interest in the animals. However, even though the use of animals in education is the only remaining outlet for direct popular exposure to Research and Education Animals, it is more restricted now than it was only a few decades ago.

Honorary Associate Professor of Pharmacology at the University of Sydney, Rosemarie Einstein, has calculated that in 1971 the University of Sydney used 55,000 rats, 16,400 mice, 2,200 dogs and 1,470 rabbits in its education programs. Since that time there has been a 99.77 per cent reduction in the real number of animals used in teaching (Einstein, personal communication, October 20, 2006). This means that whereas a student may have been exposed to multiple Research and Education Animals during the course of an undergraduate degree in the 1970s, in 2007 that is no longer the case. In addition, most

---

102 The real reduction figure was calculated by factoring in the increase in the number of students enrolled at the University of Sydney since 1971. Einstein presented her findings at the Australian and New Zealand Council for the Care of Animals in Research and Teaching (ANZCCART) 2006 annual conference. At the time of writing the proceedings of that conference had not been published. I requested a copy of Einstein’s presentation directly from her.
Australian universities have developed, or are developing, policies on conscientious objection, meaning those strongly opposed to using animals for educative purposes may be able to complete their degree by alternative means.

A reduction in the number of animals used in educational programs signifies a substantial loss in direct popular visibility for Research and Education Animals. In the period 2004–05 five welfare complaints were made to the NSW DPI concerning Research and Education Animals.\(^\text{103}\) ARRP is the body empowered to investigate complaints in relation to animals in research. The complaint data is provided in ARRP’s annual report. The report does not detail the nature of the complaints or the subsequent investigation process. Rather, it simply notes that ‘all of them were satisfactorily resolved’ (NSW DPI 2006:19). During my three-year term as a member of ARRP I formed the opinion that almost all complaints concerning the wellbeing of Research and Education Animals are made by students and/or teachers who were exposed to animals as part of an educational program. I am not aware of a researcher ever having made an animal welfare complaint against a peer.

In Australia, the RSPCA has no power in relation to Research and Education Animals. RSPCA officers are not permitted to enter research facilities for the purpose of carrying out animal welfare inspections, and all complaints received by the RSPCA in relation to

---

\(^{103}\) The NSW Animal Research Act 1985 stipulates that in order to lodge a formal complaint pertaining to animals used for research and education purposes, the complaint must be made in writing and must also be addressed to the Minister for Agriculture. However, the NSW DPI has a policy of acting on complaints lodged using other methods such as telephone or email. Such complaints are considered informal, but are also investigated. The five complaints recorded in the 2004/05 Animal Research Review Panel’s annual report were all informal complaints.
research matters are automatically referred to the DPI. It is possible that a welfare concern pertaining to an animal used in research could be identified, reported, investigated and concluded, with no more than ten people being aware of the incident.\(^\text{104}\)

Since the introduction of the NSW *Animal Research Act* in 1985 the NSW DPI has not brought any prosecutions against animal researchers. That stands in contrast to the RSPCA’s record. In the period 2002–03, the NSW RSPCA undertook 112 prosecutions for animal cruelty (cited in Moore 2005). Garner argues, in relation to the British *Animals (Scientific Procedures) Act 1986*, that ‘the secrecy surrounding the administrative machinery makes it very difficult… to assess the effectiveness of the legislation’ (Garner 1998:192). The same may be said of the Australian animal research regulatory process. Indeed, there is no way of knowing whether the reason no Australian researcher has faced charges under the NSW *Animal Research Act* is that no significant violation of the legislation has taken place, or whether they have taken place and the perpetrators have not been prosecuted.

\(^{104}\) That figure is calculated on the basis of the following fictional scenario. A researcher has approval to carry out recovery surgery on cats. As part of the protocol the researcher is required to monitor the cats’ recovery every hour for the first ten hours and euthanise any animals who appear to be suffering as a result of the surgery. However, due to teaching commitments, the researcher is not always able to check on the animals every hour and in some cases cats are left unmonitored for up to two and a half hours post-surgery. Another researcher becomes aware of the practice and is concerned because she believes some cats are suffering as a result. She decides to anonymously inform the NSW DPI that a researcher at her institution is carrying out research in a manner outside the conditions of the research licence. She speaks to a veterinary officer at the DPI’s animal welfare unit. He records the details and then informs his supervisor, his unit manager and the chair of ARRP. The veterinary officer then arranges a meeting with the head of animal research services and the chair of the AEC at the relevant institution. The DPI officer notifies the two institutional representatives that an anonymous complaint has been made. He instructs the institution to undertake its own investigation into the allegation. It does so, and in the process also notifies the animal house manager and the researcher’s superiors that a complaint has been made. The researcher admits she had not been monitoring the cats hourly as per the protocol and voluntarily agrees to suspend her research activities in order to avoid the matter being taken further.
As with Agricultural Animals, there is a range of illegal means by which interested 
parties may learn more about animal research. Yet research laboratories pose a greater 
security challenge to animal advocates wishing to trespass. Unlike factory farms, animal 
research facilities are not easily identifiable. For the most part, members of the Australian 
animal protection movement are unaware of the location of research facilities. Research 
facilities do not announce their function and there is no reason to believe that members of 
the broader community are aware of them either.

At my own institution, the University of Sydney, on the publicly available campus map 
there is a building marked ‘Animal House’ (University of Sydney 2005). Although I have 
ever inspected the University of Sydney’s animal research facilities, or visited that 
animal house, it seems likely the structure identified on the map either houses mice, rats, 
and rabbits, or was used for that purpose at some time. Charismatic species such as 
primates and dogs are likely to be housed off campus. It is not uncommon for animal 
houses not to be marked on campus maps. However, identifying a research facility is only 
the first step towards gaining access. During my time inspecting research facilities for the 
ARRP I observed that animal laboratories tend to be secure buildings requiring at least 
one set of keys to enter. In addition, facilities tend to be occupied by small numbers of 
people, meaning the presence of an unknown person during business hours would be 
likely to attract attention. Infiltrating a research facility at night would be more difficult 
and would be likely to require security codes and the ability to evade security guards. I 
am not aware of any Australian animal research laboratory having ever been infiltrated.
English and American animal protection organisations have been more proactive in obtaining images and documentation from inside animal research facilities. BUAV states in an information flyers that:

BUAV undercover investigators infiltrate laboratories and animal supply networks around the world. Our teams have gone undercover in countries such as the UK, Japan, the United States, Belgium, Poland, Tanzania, the Philippines, Mauritius, and Indonesia (BUAV ndb).

One of the first major infiltrations of an animal research facility was undertaken by PETA co-founder and former director Alex Pacheco.\textsuperscript{105} Pacheco volunteered at the Silver Spring Monkey research facility where Edward Taub was conducting research on surgically crippled monkeys (Pacheco 1985). The documentation gathered by Pacheco culminated in an effective public awareness campaign, all the more high-profile because Taub was charged and found guilty on six charges of animal cruelty (Pacheco 1985; Garner 1998: 205).\textsuperscript{106} The Animal Liberation Front (ALF) has also repeatedly broken into research facilities. In 1984 the ALF obtained footage shot inside a head injury laboratory at the University of Pennsylvania. The images were edited into a 20 minute film titled \textit{Unnecessary Fuss} which features researchers ‘mocking injured animals, using unsterilized equipment and even smoking while carrying out procedures’ (Garner 1998:206). The same year, ALF undertook an operation at the University of California,

\textsuperscript{105} For details of earlier undercover operations in research laboratories, see Plum (1994).
\textsuperscript{106} On appeal it was found the animals were not subject to state anti-cruelty legislation (Pacheco 1985).
Riverside. Following a tip-off, ALF entered the University’s research facility at night, disabled the alarm system, and removed a large number of animals. Most notably, the activists left with a stumptail macaque monkey who had had her eyelids stitched shut in order to simulate blindness in newborn humans (Animal Liberation Front nd).

More recently, BUAV undertook a five-month investigation into conditions at a German primate research facility operated by American pharmaceutical company Covance. Covance fought to suppress the distribution of footage shot by BUAV’s investigator. Covance was ultimately unsuccessful in that endeavour and the footage is now available on the internet (BUAV ndc). Around the same time PETA also infiltrated a Covance laboratory in the United States. A PETA investigator worked in the facility for 11 months in 2004/2005. The investigator used a hidden camera to record conditions inside the facility, including primates undergoing toxicology tests. That footage was given to the United States Department of Food and Drug Administration, along with a 300-page report. Covance sought to suppress the tape’s distribution and also launched legal action against PETA on the basis that PETA had conspired to financially harm Covance’s business interests. In response a PETA spokesperson said that ‘PETA knows it risks civil prosecution for spying… PETA takes such chances because it believes abuses would otherwise never become known’ (Pfister 2005). The law suit was settled out of court with PETA agreeing not to infiltrate Covance facilities for a period of three years (Covance 2005).
Possibly the best known footage surreptitiously obtained inside a research laboratory was filmed by independent filmmaker Zoe Broughton, after she successfully gained employment at a dog research facility operated by Huntington Life Science (HLS). Broughton captured footage of dogs exhibiting psychological distress and staff discussing problems associated with the use of adolescent dogs. In addition, she also filmed frustrated technicians punching and violently shaking dogs. The footage was screened on the British Channel Four network. As a result, HLS’s licence to conduct animal research was put in jeopardy, although eventually renewed (Singer 2001). However, Broughton’s undercover work culminated in two laboratory technicians being charged with ‘cruelly terrifying dogs’ (Broughton 2001:31). Broughton’s diary, kept during her time at Huntington, shows that Home Office inspectors visited the research facility repeatedly during the period (SHAC nd). It is not clear how the use of violence to subdue dogs at HLS could have been brought to the attention of authorities, or the general public, without the use of hidden cameras.

The animal research community does publish some photographic accounts of animal research. Yet the difference in emphasis between the images published by the animal research community, and animal advocates, is significant. For example, ARRP’s 2004/05 annual report contains 11 photos.\textsuperscript{107} The first four photos are captioned, and depict:

\textsuperscript{107} I am of the opinion that the Animal Research Review Panel most strongly reflects the views of the animal research community and is best understood as part of that community. The chair is an animal researcher. She has held that position for 20 years. The deputy chair is also an animal researcher, as was the previous deputy. The majority of ARRP’s members are either actively involved in animal research themselves, have previously used animals in research, or have degrees that required such animal use.
• ‘Sheep housed in indoor pens are provided with thick soft bedding and held in
groups to meet aspects of their physical and social needs. The insulated building
protects them from extremes of heat and cold’ (NSW DPI 2006:1). The picture
shows six sheep in a pen that appears to be around two metres by six metres in
size. The animals have continual access to food and a thick straw base. All
animals appear to be in good health.

• ‘Wallabies such as this, housed in a free-range enclosure, are used for a range of
behavioural and reproductive studies’ (NSW DPI 2006:4). The picture shows a
wallaby standing in what appears to be a nature environment.

• ‘Flying foxes provided with coarse netting from which to hang. Enrichments to
the housing include bags for hanging in, and hanging objects and fruit for
manipulation’ (NSW DPF 2006:5). The picture shows three flying foxes hanging
upside down from netting. They appear to have a good amount of space available
to them and enrichment objects can be seen also hanging from the netting.

• ‘Tooth filing, necessary for the dental health of horses, being conducted as part
of an equine dentistry school’ (NSW DPI 2006:7). The picture shows a man
sticking a long metal object into a horse’s mouth. The horse appears to be
tolerating the procedure well.

All other images are equally positive. They capture dogs running in fields, cats in
enriched environments, rats with room to stretch, and mice with cages designed to allow
them to hide.108

108 To view the photos, see NSW DPI (2006).
By contract, British animal protection organisation In Defence of Animals has two photos on its website’s home page. One is of a nonhuman primate staring out from behind a wire cage and the other is of a nonhuman primate reaching out through metal bars to touch a human hand (In Defence of Animals nd). BUAV uses similar images. The organisation’s website’s ‘About Us’ page has a series of five rotating images. The photos are captioned, and depict the following:

- ‘Cat filmed in a French Laboratory’ (BUAV ndd). The picture shows a kitten staring out from behind metal bars.
- ‘Chemical oral dosing of guinea pig’ (BUAV ndd). The picture shows a guinea pig being held by a human hand and a metal instrument being inserted into the animal’s mouth.
- ‘Monkey in UK vivisection supply company’ (BUAV ndd). The picture shows a nonhuman primate staring out from behind metal bars.
- ‘Mouse in UK contract testing company’ (BUAV ndd). The picture shows a mouse in a cage made of plastic and metal.
- ‘Marquette in neurology experiment filmed during BUAV undercover investigation at Cambridge University’ (BUAV ndd). The picture is of a marquette in a plastic cage. The animal has his/her mouth open and face contorted as though yelling in distress.

All photos were taken inside research facilities. In all cases the pictures appear to have been selected to tell a particular story. But ARRP, In Defence of Animals and BUAV all focus on different aspects of the animal research process.

---

[nd] To view the photos, see In Defence of Animals (nd).
Arguably the most effective means by which the visibility of research animals has been increased over the last thirty years has been through the work of Henry Spira, and others, in opposition to the use of animals for toxicology testing. Such campaigns have tended to focus on luxury items such as cosmetics and other beauty products. Spira began his campaign by buying a full-page advertisement in The New York Times. The ad carried an image of a healthy rabbit, and read:

Imagine someone placing your head in a stock. As you stare helplessly ahead, unable to defend yourself, your head is pulled back. Your lower eyelid is pulled away from your eyeball. Then chemicals are poured into the eye. There is pain. You scream and writhe helplessly. There is no escape. This is the Draize Test. The test which measures the harmfulness of chemicals by the damage inflicted on the unprotected eyes of conscious rabbits (cited in Singer 1998:ix).

Revlon responded by giving $750,000 to the development of a Draize Test alternative (Singer 1999:9). Since that time the concept of ‘choose cruelty-free’ or ‘not tested on animals’ has gained considerable mainstream currency. It is common practice for cosmetic and other beauty products not tested on animals to carry a message to that effect. That message is normally accompanied by a picture of a rabbit, further reinforcing the association between animals and research.

The results of the media analysis undertaken for this study show that Research and Education Animals are reported at a slightly reduced rate to Agricultural Animals, but
more often than Law Enforcement and Assistance Animals. However, Research and Education Animals receive considerably less media coverage than Free-Living, Companion, and Exhibited, Sports and Gaming Animals. In total, five of the articles were accompanied by pictures. Of them, the photos associated with one article were not of an animal. The other four all carried photos of animals. Of the four photos, three of them were of healthy animals: one was of an albatross flying through the air; another was of a gecko sitting on a human’s finger and the third was a series of three photos depicting how a capuchin monkey can aid people with disabilities. The monkey is clearly in an unnatural environment, but he/she is not restrained and appears to be active and healthy. The final image was the only one where the animal was not in good health. It was a photo of a jewfish who was clearly dead as he/she was sitting in the palm of a human hand. However, the fish was intact and there were no obvious signs of injury.

Most references to animals made in the articles were incidental, or intended to demonstrate the beneficial outcomes expected to be generated by a particular piece of research. For example, a small article titled ‘New Tissue Technique’ stated that ‘tissue engineers could already cause pigs to grow their own replacement tissue. It was only a matter of time before the technique could be used for humans’ (Daily Telegraph 2004:3). Another stated that artificial sweetener has ‘previously been shown to cause illnesses, including cancer, when given to animals in massive doses’ (Dasey 2004:3). A third article reported that sperm carries genetic codes which may be important to offspring development, meaning cloning may not be a viable way of producing future generations. The article reported that ‘[l]ast month scientists in Japan and Korea reported creating the
first mammal without using sperm – a mouse that is the daughter of two female mice’ (Reaney 2004:17). No article made mention of the impact of animal research on the animals.

Three of the articles pertained to work with wildlife. All three articles emphasised the value of the work to the wellbeing of the animals. One was about efforts by researchers at the Australian Museum to protect geckos. Another article was about work to track the flight path of migratory albatross. That article concluded with ‘the birds face many threats but the biggest was illegal longline fishing boats’ (Cummings 2004:11). The final article reported on efforts to restock NSW waterways. The article stated that the purpose of the project was to ‘test the species’ survival and breeding.’ It noted that ‘each fish had a non-harmful purple dye injected into its head to track its progress’ (Sydney Morning Herald 2004:5). That article, however, was accompanied by a picture of a dead fish.

In conclusion, Research and Education Animals have a low level of direct popular visibility, lower than that of Agricultural Animals. There is almost no means by which individuals not directly involved in animal research may have immediate and repeated visual contact with research animals. Education is the area which offers the greatest potential for direct popular visibility, but it is also the area which has experienced the most significant reduction in the number of animals used. Compared to Agricultural Animals, Research and Education Animals receive a slightly reduced level of media exposure. All the stories generated during the survey period were favourable towards research interests. None critically examined the use of animals in research, and none
made mention of the impact the research had on the animal involved. The use of animals in research has been a favourite issue of the animal protection movement. However, Australian activists have limited ability to penetrate research facilities and to the best of my knowledge none have been able to generate original images from within Australian laboratories. That failure has limited the extent to which advocates are able to harness the Australian media to their advantage.

However, despite their low direct popular visibility, and relatively low indirect popular visibility, Research and Education Animals have a high level of statutory visibility. Across Australia, and in many other western countries, animal research is regulated by the state. The rigour of that regulation varies between jurisdictions, yet it is common for researchers to have to seek permission to use animals in research. In both Australia and the UK the application process requires that researchers mount an argument which demonstrates that the research is necessary. However, in the Australian context, the regulation of animal research is undertaken in a manner referred to as ‘enforced self-regulation.’ In NSW, unlike the rest of Australia, inspections are carried out in order to establish whether research institutions are self-regulating in a responsible way. However, research facilities are given three months’ notice of the government’s intention to inspect and there are no recorded cases of a penalty being issued against research facilities not in compliance. In Australia, interested third parties are prohibited from participating in the

---

110 At the time of writing NSW is the only state in Australia with an animal research regulatory system that can appropriately be described as ‘enforced self-regulation.’ The self-regulation occurs via the AEC system and the enforcement occurs via ARRP inspections. The other states all have AECs in place, but the government does not carry out regular inspections to ensure they are functioning correctly. However, states other than NSW are moving towards a system whereby the institution must contract an independent auditor to report on its research facilities, including AEC system, annually. Once that system is in place all states in Australian will be regulated according to the principles of enforced self-regulation.
regulatory system. There is no means by which the usefulness and/or functionality of the enforced self-regulation process may be assessed by outsiders, unless they become member of an AEC. AEC members are banned from discussing their deliberations with non-members.

*Exhibited, Sports and Gaming Animals*

The commercial use of animals for entertainment purposes does, by its very nature, generate a high level of direct popular visibility. Those who use animals in circuses, zoos, rodeos, and for sporting purposes such as showjumping and racing, generate revenue based on the public’s ability to see the animals perform. In the case of zoos, the animal’s enclosure, interaction with other animals and feeding habits may also be directly visible to a mass audience from time to time. Furthermore, the pervasiveness of such industries is such that even those who do not pay to watch animal shows are likely to be aware that they are used for entertainment purposes. In Australia this is especially so in the case of horseracing.

In NSW, 660 clubs subscribe to the state’s centralised betting agency (Costello 2005). Many people frequent clubs for dining and other recreational purposes. All visitors to subscriber clubs are exposed to continually broadcast images of horseracing. Many other types of drinking establishments also stream horseracing and dog-racing. Furthermore, in Victoria, Australia’s second most populous state, the first Tuesday in November is a
public holiday, created to mark the Melbourne Cup, which is Australia’s most prestigious and profitable horse race. In 2005, 106,479 people were trackside on Melbourne Cup day (Flemington nda). A further 700 million people, in 120 countries, tuned in to the race broadcast (Flemington ndb). The type of mass public exposure, both direct and indirect, experienced by Exhibited, Sports and Gaming Animals vastly outstrips that of any other type of animal.

Nonetheless there are elements of all forms of animal entertainment that are not readily visible to the public. Raising the profile of less visible, and contentious, elements of the lives of Exhibited, Sports and Gaming Animals has tended to be the focus of the animal protection movement in relation to this category of animal. In the case of animals used for performance purposes, that emphasis has commonly been on training methods. British animal protection organisation, Captive Animal Protection Society (CAPS), carries a message on its website claiming that:

> Training [of circus animals] is very secretive; animals undergo training behind closed doors. There have been cases where brutal training methods have come to light. The most recent, and perhaps most notorious, was that of Mary Chipperfield (CAPS nd).

Mary Chipperfield is a high-profile British animal trainer descended from a circus dynasty stretching 300 years (BBC News 1999a). In 1998 Chipperfield, her husband, and an employee were charged with animal cruelty after animal advocates, working for the organisation Animal Defenders, recorded 800 hours of footage using hidden cameras. The footage shows animals of various species being beaten by the trio. Allegations
against them included the claim that they psychologically abused an infant chimp (BBC News 1999b). All three were found guilty on a range of charges.

In relation to animals used for sporting purposes, one of the low-visibility issues the animal protection community has sought to publicise is wastage. ‘Wastage’ is the term used to describe animals bred for racing purposes that are not fast enough to compete, fail to win races, or become injured. Animal Liberation SA claims that Australian thoroughbred breeders are responsible for producing the world’s second largest number of foals (Animal Liberation SA nd). Animal Liberation SA argues that:

In the Victorian racing industry, of the foals produced by 1000 mares, only about 300 ever start in a race. There is further wastage at the end of the first or second racing season, as horses are discarded because of chronic injury or lack of winnings (Animal Liberation SA nd).

Similarly, Animal Liberation Victoria asserts that:

The fate of racehorses after racing is one of the industry’s dirtiest and best kept secrets. Their lives are cut short by greed as their owners seek to make a profit at all costs.

For the 70% of failed racehorses who do not even run a single race, their lives are immediately expendable. Keeping them is not an option and are generally discarded like defective goods (Animal Liberation Victoria nde).
In the case of horses injured trackside, normal practice is to erect screens around the animal while he/she is being examined. In the case of untreatable animals, the curtain is kept in place while the animal is shot or administered an overdose of barbiturates.

Wastage also occurs in the greyhound racing industry. Australia has the world’s third largest greyhound racing industry (Edwards 2004:13). The industry claims 15,000 greyhounds are bred in Australia each year. That figure is contested by activists who claim the true figure is 25,000 (Edwards 2004:13). A significant proportion of the dogs bred will never race. Animal advocates claim that because dogs are cheaper to breed than horses, wastage is worse in the case of greyhound racing. Animal advocates claim that 20,000 unwanted greyhounds are slaughtered each year. Greyhounds Australia, an industry body, does not deny that more dogs are bred than are used by the industry. However, racing interests argue that while:

vast numbers are put down, they feel unfairly vilified while the more glamorous sport of horseracing escapes the rap.

‘They target the greyhound racing industry but the horseracing industry has issues,’ says Geoff O’Conner, the chief executive of Greyhounds Australia.

‘Anything to do with dogs becomes emotive. Where do you think the horses end up?’ (Edwards 2004:13)
In the case of animals used for rodeos the elements of their economic use that animal activists seek to publicise include injuries, deaths, and the methods used to encourage animals to buck. Activists claim the bucking motion is induced by a range of techniques surreptitiously applied to the animals prior to their release from the chute. They argue that flack straps and electric prods are two devices used for that purpose. Animals Australia states on its website:

FACT: the flank strap is pulled extremely tight by a rodeo hand standing above the chute just as the horse or bull exits. The rodeo hand holds a tension strap attached to the thicker strap and pulls back so that the weight of the animal virtually sets up a tug of war until it is released by the worker. At the least the strap is a severe annoyance as it applies pressure to the sensitive lumbar nerves, the inguinal canal area and frequently the prepuce of the male animal. The animal stops bucking on release of the strap (Animals Australia nd).

The Australian Professional Rodeo Association (APRA) denies such claims. It argues that the ‘flank on a horse or bull is seldom pulled tighter than that of a trouser belt, and in about the same position’ (Australian Professional Rodeo Association nd). Furthermore, the Association states that:

The Australian Professional Rodeo Association and its members share the philosophy that animals should be treated humanely and with dignity. APRA rodeo livestock are valued by all those associated with the sport. They are the lifeblood of rodeo, safeguarded
in rodeo competition by the APRA’s strict animal welfare rules, first introduced in 1951 which was well before there was any legislative need for them, and almost thirty years before Animal Liberation was even founded in Australia (Australian Professional Rodeo Association nd).

Despite some facets of the lives of Exhibited, Sports and Gaming Animals not being readily observable, the high profile of entertainment animals facilitates public debate. This is especially so in the case of charismatic megafauna. For example, since the early 2000s two Australian zoos – Taronga Zoo in Sydney and Melbourne Zoo – have sought to acquire new Thai elephants. The elephants were sourced from logging camps in Thailand, quarantined on the Cocos Islands, and arrived in Australia in late 2006. The importation was hotly contested by a coalition of individuals and animal protection organisations, including RSPCA Australia, Humane Society Australia, WSPA and Animal Liberation NSW.

It is not possible, nor desirable, to hide new elephants from public view.111 The high-profile nature of the importation program provided animal advocates with a powerful public platform from which they effectively stated their case in opposition to the Zoos’ plans. For example, The Sydney Morning Herald published an article by me, on the subject, in its Opinion section (O’Sullivan 2004). Competition for space in the Opinion section of The Sydney Morning Herald is fierce. I also held a press conference at NSW

111 Transporting the elephants out of Thailand was done in secret because of ongoing protest action by Thai animal advocates (Hayes 2006).
Parliament House, in conjunction with NSW Greens Member of the Legislative Council (MLC) Lee Rhiannon and Mark Pearson from Animal Liberation NSW. Part of the press conference was broadcast on all NSW television stations. I also conducted follow-up interviews around Australia and in New Zealand. Furthermore, I was given a five-minute spot on ABC Radio to express my thoughts on the matter (O’Sullivan 2006b). Animal Liberation NSW organised a protest outside Taronga Zoo which received wide media attention, and the Humane Society launched a legal challenge to the Zoo’s importation licence. That case was reported extensively in the media. Although the protests were ultimately unsuccessful, it afforded animal advocates the opportunity to publicly question the Zoo’s motivation and methods.

Besides providing the opportunity to reach a mass audience with an animal protection message, the publicity that individuals and organisations were able to generate also proved advantageous with respect to political lobbying. For example, I was invited to meet with Australia’s federal Minister for the Environment (hereafter referred to as the Minister). The authority to grant importation licences rests with the Minister. In speaking to the Minister’s advisor in the lead-up to the meeting it was indicated to me that the reason I had been invited to meet the Minister was because of the extensive media commentary I had undertaken on the issue.

The high-profile nature of the elephant importation program was also useful for Taronga Zoo. Taronga engaged a public relations company to help it communicate a positive

---

112 Auckland Zoo (New Zealand) had originally sought Thai elephants, but later withdrew from the program.
message. For every story put forward in opposition to the importation, Taronga was given a right of reply. Furthermore, when the elephants arrived in Australia they dominated that day’s media. Taronga gave news outlets extensive access to the elephants. That access translates into free publicity for the Zoo. It is possible that the media may have been less interested in the story had it not been for the protracted controversy in the lead-up to elephants’ arrival.

Zoos and circuses also provide a centralised, high-profile location for animal advocates to stage protests and solicit public support. Commonly, animal protection organisations protest outside circuses, using patrons arriving to see the circus as their captive audience. Protesters may use a range of methods to communicate an animal protection message, or to obstruct the circus’ business. Tactics may include the use of loudhailers to communicate with the circus audience; the distribution of anti-animal circus leaflets; the distribution of small gifts with an animal protection message to children; and the staging of alternative free entertainment outside the circus, such as juggling, acrobatics displays, and clown shows. Animal research and agricultural facilities do not offer the same high-profile potential, allowing advocates to draw attention to an issue.

In 2006, Philadelphia Zoo ended its 132-year-old practice of exhibiting elephants. Zoos in Detroit, Chicago, San Francisco and New York have all done likewise. Andrew Baker, vice-president of Philadelphia Zoo, told the media that in order to continue exhibiting elephants ‘we would need to expand the space we were devoting to them.’ Baker denied protesters influenced the decision. However, in the lead-up to the closure a group calling
itself Friends of Philly Zoo Elephants formed. Its ‘members picketed and handed out pamphlets denouncing what they called the mistreatment of elephants in Philadelphia and at other zoos’ (Strauss 2006). When Philadelphia Zoo opened in 1874 its collection included a lone elephant chained to a tree. By 2006 the elephant exhibit constructed in the 1940s was in need of replacement, but management was reluctant to ‘spend millions on a fix that could quickly become obsolete’ (Miller 2006). Concern that a new elephant enclosure would rapidly date suggests two things. The first is that public opinion influenced the issue. The second is that public opinion is changing rapidly. Despite the management’s denials, it seems likely that the animal advocates’ ability to target their campaign to zoo patrons entering the premises worked to their advantage.

The publicly accessible nature of Exhibited, Sports and Gaming Animals means that they can be observed, monitored and recorded from public land. For example, various animal protection organisations undertake ongoing work monitoring conditions at zoos. During my time as an employee at the World League for Protection of Animals I received a number of complaints from members of the public pertaining to zoo animals. I observed that members of the public who were not especially concerned about animal welfare were most likely to contact the office in relation to animals in zoos or other comparable exhibits.

However, only a limited amount of information about the lives of animals living in zoos may be obtained by paying the entrance fee and visiting the zoo as a member of the public. This is because the animals exhibited constitute only some of the animals in a
zoo’s collection. Furthermore, the conditions animals live in when they are off-exhibit may be different in significant ways to those zoo patrons see. For example, the *General Standards for Exhibiting Animals in NSW* stipulates superior housing for animals ‘on exhibit,’ compared to animals ‘off exhibit.’ Animals may be held off-exhibit for up to 90 days, before being returned to an on-exhibit enclosure. During that time many species of animals may be lawfully housed in enclosures one-third the size of the enclosure the public sees. Furthermore, during the interviews conducted for this research, one respondent with extensive expertise administering animal protection legislation in NSW argued that:

> [People are] probably not terribly aware for the most part of some of the issues for some of our livestock, and I don’t think that they’re very aware of some of the issue for animals in research. Maybe a little bit more aware of some of the issues for animals that are in establishments where they are exhibited. But the majority of people wouldn’t know necessarily all of the issues that affect those animals either.

Even though the public is encouraged to look at Exhibited, Sports and Gaming Animals, it does not necessarily follow that they have a good understanding of what they are looking at. Peter Batten, former director of the San Jose Zoological Gardens, studied American zoos in the 1970s. He ‘documented large numbers of neurotic, overweight animals.’ He further found that ‘[m]any had deformed feet and appendages cause by unsuitable floor surfaces’ (cited in Jamison 1985:117). If zoo patrons are consistently exposed to animals with physical or psychological ailments it is conceivable some may consider such animals to be ‘normal.’ However, the popularity of nature documentaries
may serve to provide zoo patrons with preconceived notions about how animals should appear, so poorly presented animals and enclosures may be conspicuous. Furthermore, the history of the development of animal protection legislation for exhibited animals in Australia suggests some zoo patrons are able to identify problematic conditions. In the introduction to the NSW guidelines for animal exhibitors it states that:

In New South Wales the display of animals is regulated by the Exhibited Animals Protection Act (EAPA). The Act was passed in 1986 due to public outcry over the poor conditions being provided for animals exhibited in some circuses and fauna parks (NSW DPI 2004a:1).

In addition to having a high level of direct popular visibility, Exhibited, Sports and Gaming Animals also have a relatively high level of statutory visibility. This is especially so in the case of animals used in circuses and zoos. The NSW Exhibited Animals Protection Act 1986 ‘covers all animal exhibition operations and includes permanent displays such as zoos, as well as exhibits at temporary establishments by circuses and other mobile displays including reptile displays and mobile animal farms’ (NSW DPI 2004a:1). It requires that animal exhibitors be licensed by the NSW DPI, and:

[the quality of the animal exhibits and the facilities provided by the exhibitors are required to meet a high standard of husbandry and presentation. Operations of zoos and fauna parks are required to hold an animal display establishment licence. People in
charge of animals exhibited at circuses and other mobile animal displays must hold an
Approval authorising the exhibition of those species (NSW DPI 2004a:1).

That approval is granted and renewed annually by the Director-General (DG) of the NSW
DPI, who acts on advice from the NSW Exhibited Animals Advisory Committee,\textsuperscript{113}
which acts on advice from veterinarians employed as animal welfare officers by the NSW
DPI’s Animal Welfare Unit. The animal welfare officers inspect animal exhibits in
response to new licence applications, in cases where new enclosures are added to already
licensed facilities; in response to complaints, and on a regular basis to ensure appropriate
standards are being maintained (NSW DPI 2004a:6). The Act does not specify the
regularity with which routine inspections must take place. The licensing system captures
zoological parks, fauna parks, oceanariums, bird aviaries, animal displays in council
parks and animal displays installed as attractions at other facilities (NSW DPI 2004a:1).
The type of licence required varies depending on the number of animals on exhibit and
whether the exhibit is a permanent structure or not. There are also special provisions in
place for captive dolphins and whales (NSW DPI 2004a:2). In the case of horseracing,
horse-jumping, dog-racing and rodeos, the state does not undertake routine animal
welfare inspections; a complaint must be made in order to initiate an animal welfare
investigation in relation to such animals.

\textsuperscript{113} The Exhibited Animals Advisory Committee is made up of one person nominated by the NSW Minister
for Primary Industries; one person nominated by the NSW Zoological Parks Board; one person nominated
by the NSW National Parks and Wildlife Service; one person nominated by the NSW Minister
administering POCTAA; one person from a prescribed animal welfare organisation; and one person
nominated by a prescribed organisation representing animal exhibitors. The prescribed animal welfare
organisations are the NSW Animal Welfare League, Project Jonah, the NSW RSPCA and World Wide
Fund for Nature. The prescribed organisations representing animal exhibitors are the NSW Association of
Fauna and Marina Parks, the Circus Federation of Australia and Associated Barkeepers and Traders (NSW
DPI 2004a:3–4).
Even though many of the ways in which animals are used for exhibiting and sporting purposes are technically available for all to see, it is worth noting that in many cases animal exhibits are not popular or readily accessible forms of entertainment. Indeed, the culture that surrounds many forms of animal entertainment means they are marginalised activities. For example, animal groups have successful lobbied local government to prohibit circuses with exhibited animals from setting up on land throughout most of Sydney, north up to Newcastle, west as far as the Blue Mountains and in some areas south of Sydney.\(^\text{114}\) In practice this means that people living in Australia’s largest city must travel for one to three hours to see circuses with performing animals. This is likely to translate into a reduction in the number of people frequenting circuses. Furthermore, rodeos, horse-jumping and dressage are all largely beyond the experience of most urban dwellers. I grew up in a suburb of Sydney twenty minutes’ drive from the Central Business District. During my adolescence I was never exposed to rodeos and neither were my peers. Equally, as an adult I do not know anyone who regularly (or even occasionally) attends such events. Rodeos are closely associated with rural communities and are largely foreign to the majority of the population living in urban centres. That means that zoos and aquariums are the primary animal exhibits most people are likely to be directly exposed to on a regular basis. In the case of racing, it is an important part of Australia’s cultural identity but for the majority it is an animal use most people observe via the mass media, and not directly. Indeed, the form of animal entertainment that most people living in the

\(^{114}\) As of July 2006, the councils in NSW that had banned circuses with exotic animals from their land were: Newcastle, Blue Mountains, Warringah, Woollahra, Hornsby, Pittwater, Manly, Randwick, Ku-ring-gai, Lake Macquarie, Liverpool, and Parramatta (Voiceless nda).
developed world would be most likely to be exposed to most regularly is the use of animals in film and television.

The media survey showed that Exhibited, Sports and Gaming Animals were the second most reported category of captive animal and the most reported category of economically productive animal. The papers surveyed carried 47 stories about Companion Animals compared to 19 about Exhibited, Sports and Gaming Animals. Although there were more than twice the number of stories about Companion Animals, it is important to recall that the survey only included the papers’ news sections. All the papers also have sections dedicated to racing. Images and details about horseracing and (to a lesser extent) dog-racing also appear in the form guide and the sports sections. None of those racing-specific sections were included in the survey, so the extent to which those who read the paper are exposed to information about, and photos of, Exhibited, Sports and Gaming Animals is larger than is suggested by the survey results.115

Of the 19 stories about Exhibited, Sports and Gaming Animals, five pertained to racing or jumping. Of them, one story reported claims by a British bookmaker that ‘at least one [horse] race a day is fixed’ (The Guardian 2004:12). One was about a showjumper hoping to qualify for the Athens Olympics; another was about an Australian horse who is expected to become a dressage star of the future; another was about a racehorse

115 When I began the survey I had intended to include the form guide because it contributes to Exhibited, Sports and Gaming Animals’ level of visibility. However, once I began the data collection process it became clear that including the racing section would create a number of methodological problems, the most pressing of which is that the form guide may be ten pages in size. In the ten pages it may include three or four articles about horseracing, three or four photos, and then the details of upcoming races, including the names of hundreds of horses. It was unclear how I could count the form guide in a way that was consistent with the rest of the survey. I therefore decided to exclude the sections of the paper specifically dedicated to racing. However, it is noted that animals used for racing have a significant presence in Australian print media.
syndicator whose business was destroyed because of infighting; and the final story was about a dog race held each year in an Australian country town. Of the other 14 stories, one was a small article reporting that the mayor of an Australian country town had to be taken to hospital after falling from a bull at a fundraising rodeo event. One was about a dwarf stallion standing 51 centimetres tall who has become a local celebrity and now makes regular media appearances. One was about a conference being held at Australian Reptile Park to discuss the need to store antivenom to protect both professional animal handlers and reptile collectors, and one was about a lion handler who was mauled by a tiger at a Bangkok Zoo.

All other stories related in some way to zoos. One reported that a new zoo is set to open in Sydney’s CBD. Another reported that a state-owned regional zoo in NSW had an emergency when a keeper allowed a lioness to stray into a public area. Of the remainder of the stories, most reported on a specific animal(s) who is/are somehow unusual. Such stories appear to be largely promotional stories for the benefit of the zoo. However, in the case of two stories run in *The Daily Telegraph*, it appears the paper ran stories about animals in zoos for the benefit of its own promotion associated with its Sunday paper. The promotion consisted of a series of six free magazine inserts called ‘Fragile Kingdom – Protecting our Future.’

Two articles may be understood as being critical of zoos to some extent. One was about the closure of an elephant exhibit at an American zoo. The other was about Chilean flamingos at Taronga Zoo losing their colour. In the case of the flamingo story, the article
did not explicitly question the appropriateness of a zoo environment. Indeed, the accompanying photo of a flamingo being treated by a Taronga Zoo veterinarian suggests the story was facilitated by the Zoo’s public relations department. However, it did record that Taronga Zoo had been unable to breed from the birds. Readers may have been able to surmise that the birds’ inability to breed may be a result of inappropriate environmental conditions.

In conclusion, Exhibited, Sports and Gaming Animals have the highest level of direct popular visibility among economically productive animals. By their very nature, they are animals who must be seen in order to generate profit. However, many such animal uses are not popular forms of recreation so even though people are entitled to see the animals, most do not do so often. Most people would be more likely to have more regular direct popular exposure to Companion Animals than to Exhibited, Sports and Gaming Animals. Furthermore, not all elements of the lives of Exhibited, Sports and Gaming Animals are directly visible to those without a pecuniary interest in the animals. It is the unseen side of animal exhibits about which animal advocates tend to be most critical.

In relation to indirect popular exposure, Companion Animals are more than twice as likely to be the subject of stories in the news sections of newspapers than are Exhibited, Sports and Gaming Animals. However, large sections of the paper are also dedicated to horseracing and dog-racing. In addition, Australians are commonly exposed to racing images while they undertake other recreational activities such as drinking at a pub or eating a meal at a club. Beyond a high level of direct and indirect popular exposure,
Exhibited, Sports and Gaming Animals also have a high level of statutory visibility. Animal exhibits in NSW must be licensed. The licensing process includes ongoing inspections by government inspectors, including occasional spot inspections. Furthermore, because of the high visibility of the animal use, problems with animal exhibits are readily reported to authorities, and the extent to which authorities have acted on complaints may also be measured by the complainant or animal advocates.

*Law Enforcement and Assistance Animals*

Law Enforcement and Assistance Animals constitute only a small percentage of the overall number of animals used for economic purposes. However, their status is unlike that of any other type of animal and must therefore be considered as a separate case. Although this category of animal is not normally directly productive in an economic sense, their role is such that they help provide stability and protection for a range of social interests, many of which aid economic wellbeing. Law Enforcement and Assistance Animals are used by the state in a number of capacities, including detecting prohibited substances, assisting police searches, and in military operations. This category also includes animals used for private security purposes and animals that provide assistance to people with disabilities. Dogs are most commonly used as assistance animals, and they ‘can save the community significant monies by reducing the attendant care needs of their disabled recipients’ (Assistance Dogs Australia 2006). That functionality differentiates them from Companion Animal dogs.
The Australian Quarantine and Inspection Service (AQIS) uses sniffer dogs to detect fruit, vegetable, meat, plants, seeds, and live animals entering Australia illegally via international airports. Dogs used in this way are referred to as ‘passive response dogs.’ Passive response dogs are the type of sniffer dog the public is most likely to have direct visual contact with. Passive response dogs are trained to patrol airport arrival areas. Once a scent is detected the dog sits by the offending baggage. The number of dogs used by AQIS in this way is small: 15 in Sydney; 10 in Perth; nine in Melbourne; eight in Brisbane; two in Cairns; two in Adelaide and one in Darwin (AQIS 2006). In addition to being directly visible to passengers entering Australia, the dogs are also featured in a popular weekly Australian prime time television program called Border Security. In addition to passive response dogs, AQIS also uses ‘active response’ dogs. Active response dogs are not seen by the public, but are used to detect prohibited substances entering Australia via the postal service.

AQIS recruits dogs for both programs by appealing to members of the public who may have a suitable dog that could be included in the program. As part of the advertising process for new dogs AQIS states that:

AQIS standards for a Quarantine Detector Dog are high and only very particular dogs are chosen to be part of the national detector dog team.
All quarantine dogs are given the best of care and attention. A handler is responsible for their welfare and work performance… and when they eventually leave the program, AQIS guarantees to find them a good home (AQIS 2006 original abridgment).

Another federal government body, the Australian Customs Service (hereafter referred to as Customs), also uses passive and active detector dogs to monitor ports. Customs uses purpose-bred puppies and close to 1,000 such puppies have been successfully deployed throughout Australia and overseas (Australian Customs Service 2006). Customs works cooperatively with other Australian government agencies and detector dogs are occasionally used for purposes such as assisting state and federal agencies with explosive detection work (Australian Customs Service 2006). However, the dog’s primary role involves working at Australia’s ports, so very few people are likely to have direct visual contact with the animals.

The Australian Army and Air Force also use dogs for national security purposes. Referred to as ‘Military Working Dogs’ (MWDs), they are recruited by advertising directly to the public. Those selected to become MWDs are:

- used to protect our bases in forward positions [in times of conflict], and they can also be used in a semi-combat role to locate people who have gone where they shouldn’t have gone, to locate the baddies (McKenzie 2003).

---

116 Customs works with comparable agencies in other countries. Australia also occasionally gifts detector dogs to developing countries (Australian Customs Service 2006).
Dogs selected to be MWDs have a low direct popular visibility, although such dogs may be used from time to time for ceremonial purposes (McKenzie 2003).

The NSW Police force is another government agency that uses dogs for drug detection purposes. That use has been controversial in NSW since 2000, when the government increased the number of trained sniffer dogs as part of its Sydney Olympic Games security program. Dogs originally trained for the Olympics have been redeployed in wide-ranging public patrols. The use of sniffer dogs in this way was made possible by the NSW Police Powers (Drug Detection Dogs) Act 2001. That Act gives police the power to use drug detection dogs at pubs, clubs, sporting venues, and on public transport routes without a warrant, and elsewhere with a warrant (Mills 2006). In some cases the police have been issued warrants that cover whole suburbs (Cripps and Murphy 2004:3). In 2004, the NSW drug detection dog unit had 12 operations dogs and 14 handlers (NSW Ombudsman 2004:6). The NSW Council of Civil Liberation claims that while no data are available on the number of people ‘sniffed’ in NSW since the Act came into force, a report in The Australian newspaper claims that 10,000 people were searched for drugs during the period 2002 to 2004 (cited in Mills 2006). Between 2002 and 2004, dogs were used in the Sydney Greater Metropolitan area 46 per cent of the time and in the Sydney Inner Metropolitan area 32 per cent of the time, so most of the time the dogs were used in and around the city of Sydney. As a result, hundreds of thousands of Sydney residents may have had visual contact with the dogs. However, that visual exposure is likely to have been brief.

117 That Act has since been repealed and replaced by the NSW Law Enforcement and Assistance Animals (Powers and Responsibilities) Act 2002.
In addition to drug sniffer dogs, the NSW government uses dogs to help locate offenders, missing persons and as part of police patrols. Horses are also used to assist with law enforcement duties. In 2004 the NSW Mounted Police was made up of 34 horses and accompanying police officers. The horses are used for a mix of purposes including traffic and crowd management, patrols, and ceremonial duties (NSW Police 2004). The NSW Mounted Police are based in Sydney and the stables are open for public tours on certain days of the year (Hunter 2004).

Law Enforcement and Assistance Animals tend not to be the focus of animal protection campaign work in Australia. While the use of sniffer dogs to patrol Sydney’s streets and transport network has become a contentious issue, generating a significant level of public debate, it is not an issue the animal protection movement has embraced. However, while working for the World League for Protection of Animals I developed the view that some members of the Australian animal protection movement are concerned about the conditions in which private security dogs live, especially dogs that are used to guard uninhabited buildings. Concerns about the wellbeing of security dogs were also expressed by members of the public from time to time. They included the feeling that some security dogs received inadequate levels of companionship; their diet may have been lacking in nutritional value; the animals were not groomed adequately; they did not always have access to an adequate level of veterinary care; and females were overbred. In sum, the perception appeared to be that some security dogs were treated as an economic input cost by private security firms, and therefore savings were being achieved by affording animals
a low level of care.

The security industry actively seeks to protect its image in relation to its use of dogs. The Australian Security Industry Association Limited (ASIAL), which represents 85 per cent of the Australian security industry (ASIAL nda), carries a message on its website advising members that ‘[b]y adhering to the code [of practice for security dogs], people involved in this industry are demonstrating to the general community their concern for the welfare of the animals in their care’ (ASIAL ndb). The same wording is included in the security dog code itself.

Law Enforcement and Assistance Animals’ level of indirect visibility via the state is complex. In one sense police dogs are viewed as police officers and as a result penalties for harming police dogs are more severe than penalties for those who harm other types of dogs. However, the police may be viewed as having a pecuniary interest in police dogs and may therefore not be considered suitably objective to judge whether the level of care an individual dog receives is adequate. This situation is further complicated by POCTAA, which exempts police dogs from those animals whose wellbeing may be assessed, and protected, by the RSPCA. That means the RSPCA is powerless to take action in cases of alleged cruelty or neglect of police animals.\(^\text{118}\)

Law Enforcement and Assistance Animals were mentioned in five stories during the media survey period. No stories about Law Enforcement and Assistance Animals were carried in the weekend papers. Three of the stories mentioned MWDs in relation to the

\(^{118}\) That provision is complex and it is discussed more fully in Chapter VIII.
allegations of torture by US troops in Iraq. Two of those stories were accompanied by a photo of a naked Iraqi prisoner cowering while surrounded by US military officers, two of whom had MWDs with them. Of the other two stories, one was about the use of drug sniffer dogs in NSW, and the other was a brief story accompanied by a series of photos showing one of Buckingham Palace’s Household Cavalry officers falling off a horse. Law Enforcement and Assistance Animals were the category of animal mentioned the least in the mass media. That may suggest they have the lowest level of indirect popular visibility. However, if one factors in their relatively low numbers and comparatively low level of economic significance, their level of indirect popular visibility may not be as low as first assumed.

In conclusion, Law Enforcement and Assistance Animals employed for domestic purposes nominally have a high level of direct popular visibility. Whether the animal is used by the state or by private security companies, their role in aiding Law Enforcement is likely to mean they are directly visible to the public in a popular sense. The direct popular visibility of state-owned Law Enforcement Animals is further enhanced by their ceremonial role. This is especially so in the case of mounted police. That use combined with the animal’s size means many people are likely to see the animals either directly or in the media. However, that direct popular visibility of Law Enforcement Animals is limited by the number of animals used for such purposes. The number of police animals in NSW is likely to be no more than 100. People who travel overseas regularly, those who live in Sydney, and those who use Sydney’s public transport network may come in contact with a Law Enforcement and Assistance Animal maybe once a year; those who
live outside Sydney and do not travel may have no direct exposure at all. Assistance dogs are also maintained in relatively small numbers, with only 50 assistance dogs in place, and a further 38 in training, in Australia in 2006 (Assistance Dogs Australia 2006). Privately operated guard dogs may also have a reasonable level of direct visibility. However, such animals are also only utilised in small numbers. Animals used by the military and to monitor the postal service have little or no direct popular visibility.

Companion Animals

Companion Animals are animals maintained in the home, usually in small numbers, for the personal pleasure of the animal’s owner. Companion Animals may include cats, dogs, rabbits, mice, birds, fish, and reptiles. Companion Animals do not generate significant wealth for their owners. However, a considerable economy exists to support them. Companion Animals, through their human owners, are consumers of veterinary care, dog-walking services, dog grooming, pet food, pet toys, bird cages, and much more.

119 The use of the word ‘owner’ to describe the relationship between humans and non-economically productive captive animals is becoming less popular. Many animal protection organisations encourage use of the term ‘guardian’ and that word has been adapted in some jurisdictions. For example, in the US, 16 cities and towns have supplemented the word guardian for owner in their animal welfare statutes (National Association for Biomedical Research 2007). Nonetheless, the term ‘owner’ is used throughout this section. That phrase is retained partly because it is more widely accepted and partly because it most accurately reflects the legal nature of the human/Companion Animal relationship.

120 It is possible that some Companion Animal owners may generate a small amount of income through such things as winning dog shows or through small-scale pedigree breeding enterprises. In the case of large-scale breeding enterprises, the wealth generated may be significant. However, large-scale breeding enterprises, often referred to as puppy mills, are not included in this categorisation.

121 Veterinary medicine developed for strategic military purposes. The veterinary skills learnt for the benefit of Law Enforcement Animals were then applied to other economically productive animals such as draught animals and Agricultural Animals. However, in the current era, most veterinarians work as small
It is common for animal advocates to perceive Companion Animals as ‘gateway animals,’ meaning they are the animals with which modern humans are most likely to have direct contact. In the minds of animal advocates, that contact is important because it presents an opportunity for humans to develop a first-hand appreciation of other nonhuman animals. In the best-case scenario, intimate contact may result in feelings of love and respect for the animal(s) and those sentiments may then be translated into positive feelings towards other (non-companion) animals. For example, International Fund for Animal Welfare (IFAW) argues that:

Because most people’s closest connections to animals are with cats or dogs, companion animals are ambassadors for other species. They introduce us to the concept of animal welfare and foster a humane attitude toward all animals, wild and domestic (IFAW 2003).

Although the human/Companion Animal relationship may not necessarily produce the outcome foreshadowed by IFAW, the organisation’s assertion that ‘most people’s closest connections to animals are with cats or dogs’ is well-supported by evidence. For example, in Australia in 2002, 7.5 million households include at least one Companion Animal. That figure represents 64 per cent of all Australian homes (Petnet nd). An even greater number of people will be part of a household that includes a Companion Animal at some point during their life (Animals Australia ndb). In the UK around half of all animal practitioners, meaning they deal primarily with Companion Animals. At the same time the medical services available to Companion Animals has also expanded and includes, among other things, acupuncture, homeopathy, psychological assessments and organ transplants.
homes include a Companion Animal (Pet Health Council 2005)\textsuperscript{122} and in the US, census figures show that in 1996, Americans maintained over 128 million dogs, cats, birds, and horses as Companion Animals (US Census 2000 2006). Furthermore, an estimated 11 million reptiles are also kept as companions in America, the most popular species being turtles, lizards, and snakes (Humane Society of the United States 2006b).

In comparison to the large number of people who live with a Companion Animal, in July 1994, in the American city of Seattle, a little over 1,000 people made a booking to see a circus featuring performing animals (Einwohner 1999:62). When one also considers the large number of people who may not own a Companion Animal themselves, but will interact with a Companion Animal owner, it is likely that most people have considerably more regular and repeated first-hand exposure to Companion Animals than they do with Exhibited, Sports and Gaming Animals. Furthermore, those willing and able to pay to see Exhibited, Sports and Gaming Animals perform will most likely only do so on special occasions. Anyone living in a community is likely to encounter Companion Animals on a daily basis.

Moreover, whereas direct contact with Exhibited, Sports and Gaming Animals is likely to be non-physical, interaction with Companion Animals, for many people, includes touching and the opportunity to see the animal at close range. This claim may not be surprising given that Companion Animals are often small animals, bred or adapted to urban living. They often live in people’s homes and, in the case of dogs, are frequently

\textsuperscript{122} In the UK, Companion Animal ownership has declined by around seven per cent of households overall. There has been a more marked decrease in the number of Companion Animal dogs, but an increase in the number of Companion Animal cats (BBC News 2005).
visible walking down the street and running around in parks. Companion Animals are the only category of captive animal that has been integrated into modern urban centres and as such they have a higher direct popular visibility than any other category of captive animal.  

However, despite Companion Animals having the highest level of direct popular visibility, their presence is curtailed in some ways. For example, in NSW the trend in Companion Animal regulation has been towards an increasingly repressive framework. Speaking in NSW Parliament in 1998, Richard Jones MLC argued in relation to proposed companion animal legislation that:

[T]his bill is deeply flawed and is completely wrong in focus. Instead of encouraging responsible pet ownership and quality of life for companion animals, the bill places heavy penalties on owners of companion animals, and sections of the bill are explicitly anti-animal.

The bill actively discourages people from owning companion animals by forcing them to comply with expensive identification and registration requirements, by introducing heavy penalties and by implying that all companion animals are nuisances and must be effectively controlled... As currently drafted, the bill provides that the owner of a

\[123\] In relation to other categories of animals is has been argued that visibility only applies when those who do not have a pecuniary interest in the animal are able to see the animal. For example, if five researchers have direct visual contact with a Research Animal they are using in a protocol, but no one else has visible access to the animal, that animal would be considered to have a low level of visibility because the researchers have a vested interest in the animal being used in that way. In the case of non-economically productive animals there is no pecuniary interest. However, the owner’s ability to see their Companion Animal cannot be said to contribute to the animal’s overall level of visibility. Visibility is achieved for Companion Animals only in cases where people other than the animals’ owners are able to see them.
companion animal can be penalised if his or her dog or cat finds its way into a
schoolyard. The owner can be penalised if his or her dog or cat chases another person or
an animal (Legislative Council Hansard 1998).

The final version of the Act, in place in NSW at the time of writing, stipulates that all
dogs must be under the effective control of a responsible human when they are in the
public domain. That control means some kind of lead and a single person may not be in
control of more than four dogs at once. The Act does make provision for off-lead areas
where dogs may exercise without restraint. However, each local government (council) is
obliged to provide only one off-lease space. During my period of employment with
WLPA, one of the most common complaints made to the office pertained to councils that
were not meeting their requirement to provide an off-leash exercise area, or large council
areas with only one off-lead area, making it difficult for some residents to access it. The
Act also identifies a range of places where dogs are not allowed to stray, including
shopping areas and playgrounds. Furthermore, in NSW, Companion Animals are
prohibited from almost all forms of public transport (NSW Young Lawyers Animal
Rights Committee nda). Such provisions have the effect of lowering Companion Animal
visibility.

At the same time the state has acted to place restrictions on where Companion Animals
may lawfully go and in what numbers; a range of private institutions have done likewise.
Most notably, there has been a tendency over the last ten years in Australia for housing
strata schemes to introduce bylaws that prohibit, or limit, companion animal ownership.
Those living in rental properties and the elderly in nursing homes regularly complain of prohibitions against Companion Animal ownership. All such restrictions have broad implications for visibility. However, despite such trends, there is little doubt that under normal circumstance most people living as part of a modern community would have regular, direct exposure to Companion Animals. Furthermore, in Australia it is common for people to act in violation of restrictive Companion Animal laws, especially in regards to dogs being continually restrained while in public.

Although Companion Animals have an overall high level of direct popular visibility, they predominantly occupy the private sphere. In Australia there has been an increasing popular trend towards keeping cats permanently indoors. Furthermore, birds, fish, reptiles, and small mammals such as rabbits and mice are unlikely to be visible to humans other than their owner, unless the owner allows visual contact to occur, for example, by inviting guests into the home. The private nature of Companion Animal ownership means that owners are at liberty to obscure their Companion Animal’s level of public visibility if they wish to do so. This is not possible in the case of Exhibited, Sports and Gaming Animals because zoos that do not allow patrons to look at the animals are not economically viable. Two of the most commonly discussed problems facing Companion Animals in the private sphere are associated with domestic violence and hoarding.

---

124 Some cat owners do so out of concern for the animal’s safety, especially if they live near busy roads. In NSW, some do so because the NSW Companion Animals Act 1998 makes it difficult for cat owners to allow their animal outside if their neighbours object to the animal being on their property. But there is also an increasingly popular view that cats are an environmental hazard and should be kept indoors in order to protect prey animals, especially natives. It is likely some cat owners keep their cats inside either because they sincerely subscribe to that view or because they feel social pressure to appear to be concerned about the environment.
As part of the Humane Society of the United States (HSUS) campaign against domestic violence it has compiled information on ‘high profile cases of animal cruelty and neglect from across the country’ (Humane Society of the United States 2003:1). The report is not intended as a comprehensive scientific study of animal cruelty. However, it does offer an insight into the rate at which individuals who harm members of their family may also inflict injury on Companion Animals. The report states that in 2003, from their sample of 1,373 animal cruelty cases, 15 per cent of the intentional cruelty cases also involved family violence (Humane Society of the United States 2003:2). HSUS also found that at domestic violence shelters 91 per cent of adult victims and 73 per cent of children spoke of Companion Animal abuse when they first entered the shelter (Humane Society of the United States 2003:2–3). HSUS concludes that:

> It’s important for law enforcement officers, animal care and control officers, animal sheltering professionals, family violence advocates and others to be aware of the connection between animal cruelty and family violence and develop interagency networks to reduce this problem (Humane Society of the United States 2003:3).

Scholarly research lends weight to HSUS’s findings. For example, Arluke et al. (1999) conclude that there is a link between animal abuse and a range of antisocial behaviours. Although the authors do not provide data on the species of animals most often abused, it is likely to be predominantly Companion Animals as they are the animals most people

---

125 Intentional cruelty is defined as ‘when a person knowingly deprives an animal of food, water, shelter, socialization, or veterinary care or maliciously tortures, maims, mutilate, or kills an animal. People who are intentionally cruel to animals take satisfaction in causing harm’ (Humane Society of the United States 2003:1).
have ready access to. They are also animals that can easily be abused in the home, so that the act is hidden.

Animal hoarding is another means by which Companion Animals suffer in the private sphere. A report compiled in 2006 by the US-based Hoarding of Animals Research Consortium defined animal hoarding as the:

- failure to provide minimal standards of sanitation, space, nutrition, and veterinary care for animals;
- inability to recognize the effects of this failure on the welfare of the animals, human members of the household, and the environment;
- obsessive attempts to accumulate or maintain a collection of animals in the face of progressively deteriorating conditions, and
- denial or minimization of problems and living conditions for people and animals (Patronek et al. 2006:1).

The authors claim that:

Situations meeting this definition are pervasive. Animal hoarding occurs in every community, and thousands of cases, involving hundreds of thousands of animal victims, are reported every year. Even more cases are likely to go undetected or unreported (Patronek et al. 2006:1).
Following an inspection of the residence of an animal hoarder by HSUS in 2003, the organisation published a report in which it stated that:

they found more than 300 cats, including more than 70 felines in various forms of decomposition. If the smell of animal death weren’t enough, volunteers also encountered surfaces covered with inches of waste and garbage.

‘In one part of the house, we were stepping on several layers of faeces and skeletons,’ says The HSUS’s Krista Hughes, one of the volunteers who served as part of a team to document the situation and rescue the cats. ‘It was disgusting. The amount of filth was unbelievable’ (Humane Society of the United States 2006c).

Australian animal protection organisations have become increasingly concerned about animal hoarding over the last few years. The NSW RSPCA has calculated that if American hoarding data can be used to assess to extent of the problem in Australia, then there are likely to be 20,000 animals being hoarded in NSW. The RSPCA does not provide evidence to support those figures. But a staff member from the RSPCA’s major shelter stated in an interview that:

The shelter has taken in hundreds of dogs from serial offenders. We’ve had cocker spaniels from an animal hoarder who has been known to us for many years, Maltese terriers from two convicted hoarders, chihuahuas, Chinese crested dogs, and many others (Coleman nd).
The RSPCA tends to do its best work in relation to Companion Animals. RSPCA’s NSW 2004/2005 annual report documents the organisation’s media highlights for that year. Every achievement relates to media coverage for Companion Animals. Much of the focus was on a number of high-profile cases of cruelty against kittens. The rest pertained to use of the media to publicise RSPCA shelters and re-homing programs (RSPCA NSW ndb:55-56). RSPCA shelters deal overwhelmingly with Companion Animals. In 2004/2005 RSPCA NSW received 20,814 abandoned, unwanted, and lost dogs, and 14,247 cats. By comparison the shelters received only 3,989 ‘other animals,’ some of which were likely to have also been Companion Animals (RSPCA NSW ndb:17). Furthermore, the RSPCA’s major annual fundraising event, the ‘Million Paws Walk,’ is a picnic day where people are encouraged to attend with their Companion Animal dog. The day often attracts media attention. All such events raise the profile of Companion Animals and therefore contribute to their overall visibility.

Companion Animal ownership does not require the owner to demonstrate good character. A registration system is in place in NSW, but the registration process is not intended to screen out undesirables. Rather it is maintained to raise revenue, develop a culture of responsible Companion Animal ownership, and to assist authorities re-home lost animals. In Australia there is no system in place to regularly check on the quality of care Companion Animals receive in the home. Law enforcement work carried out in relation to this category of animal is done in response to reports lodged with authorities. In NSW veterinary staff are not legally obliged to report suspected cases of cruelty or neglect.

126 The court may place an order against an individual found guilty of animal cruelty or neglect which prohibits them from owning an animal for a set period of time. The court may also limit the number of animals an individual may own.
In the period 2004–05 the NSW RSPCA received 15,562 complaints in relation to dogs, 2,868 in relation to cats and 877 with regard to animals defined as ‘small pets.’ More complaints related to dogs than any other species of animal (RSPCA NSW ndb:12–13). The nature of some of the complaints suggests that neighbours, or casual passers-by, may have observed the animal from outside the owner’s property. For example, in the case of dogs, 778 complaints made to the RSPCA related to ‘inadequate exercise,’ 1,251 related to ‘inadequate shelter,’ and 1,303 reports were of dogs being ‘tied continually’ (RSPCA NSW ndb:12–13). Furthermore, the large discrepancy between the number of complaints made in relation to dogs, as compared to cats, also suggests that problems with dogs are more readily detected, and therefore more often reported, because dogs tend to be more easily visible from public land. It seems unlikely that cruelty is taking place against dogs at more than five times the rate it is taking place against cats.

The NSW RSPCA and the NSW Police have the same power of entry in relation to Companion Animals as they do in the case of Agricultural Animals. In both cases the owner or manager of the property may deny entry. If that occurs, a warrant may be sought which allows an inspection to occur without the owner’s consent. As is the case with Agricultural Animals, the RSPCA may choose not to act on a complaint about the welfare of a Companion Animal.

The media survey shows that Companion Animals were the second most commonly reported category of animal. They were the subject of, or mentioned in, 47 stories
compared to Free-Living Animals who were the subject of 48 stories. A longer study is required to establish whether a greater variation exists between the two groups over time. However, as is the case with Exhibited, Sports and Gaming Animals, the media analysis presented here does not entirely reflect the true extent to which Companion Animals are visible via the mass media. This is because it is common for the classified sections of newspapers to carry re-homing advertisements for Companion Animals. Many such ads include a picture of the animal. No advertising was included in this study.

The 47 stories related to Companion Animals dealt with by the four papers surveyed are outlined below in table form.
Table II: Companion Animal Media Analysis

<table>
<thead>
<tr>
<th>Issue</th>
<th>Number of Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dangerous dogs</td>
<td>11</td>
</tr>
<tr>
<td>Companion Animals in need of a home, or a home found</td>
<td>7</td>
</tr>
<tr>
<td>Debate over the provision of off-lead areas for dogs</td>
<td>6</td>
</tr>
<tr>
<td>Quirky stories(^{127})</td>
<td>5</td>
</tr>
<tr>
<td>Veterinary surgeons</td>
<td>3</td>
</tr>
<tr>
<td>Violent acts by humans against Companion Animals</td>
<td>3</td>
</tr>
<tr>
<td>Companion Animals being positive for young children</td>
<td>2</td>
</tr>
<tr>
<td>RSPCA Million Paws Walk</td>
<td>1</td>
</tr>
<tr>
<td>Companion Animal heroes</td>
<td>1</td>
</tr>
<tr>
<td>Companion Animals as consumers</td>
<td>1</td>
</tr>
<tr>
<td>The evolution of Companion Animal dogs</td>
<td>1</td>
</tr>
<tr>
<td>Reptiles as Companion Animals</td>
<td>1</td>
</tr>
<tr>
<td>The origins of Companion Animal cats</td>
<td>1</td>
</tr>
<tr>
<td>Companion Animal incidently mentioned as part of a story about a family</td>
<td>1</td>
</tr>
<tr>
<td>Proposed ban on cosmetic tail-docking for Companion Animal dogs</td>
<td>1</td>
</tr>
<tr>
<td>Companion Animal laws</td>
<td>1</td>
</tr>
<tr>
<td>Cloning techniques for Companion Animals</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>47</strong></td>
</tr>
</tbody>
</table>

In conclusion, Companion Animals have the highest level of direct popular visibility due to their community presence. Close to half of all homes include a Companion Animal and an even greater number of people will either live with a Companion Animal at some time during their life, or interact with a member of the community who owns a Companion Animal. Companion Animals are predominantly maintained within a private residence and therefore individual animals may be kept out of sight. However, most people are highly aware of the existence of Companion Animals, and even in cases where they

\(^{127}\) Two stories related to a cat who went missing for seven years and was then returned to her owner. One was about a dog who could brush his own teeth. One was about research into whether owners look like their dogs and one was about a man who rode his horse into town drunk and as a result was charged with drink-driving.
cannot be seen, neighbours may be able to smell or hear Companion Animals confined within homes.

Companion Animals do not have a higher level of statutory visibility than Agricultural Animals. Authorities do not regularly inspect residences in order to assess the welfare of Companion Animals. Inspections only take place in response to complaints. However, RSPCA data suggests that more complaints are received in relation to Companion Animals than in relation to other categories of animals. Furthermore, because Companion Animals are kept in smaller numbers, if a welfare inspection does take place, problems may be more easily identified and rectified.

Companion Animals have the highest level of indirect popular visibility, via the mass media, among captive animals. The number of stories in relation to Companion Animals is more than double that of the next closest category. However, it is important to note that although the level of visibility Companion Animals enjoy is enhanced because of their high media profile, the largest number of stories, 11 in total, were not positive. Rather, they focused on dangerous dogs and often included details of dog attacks on humans. Such stories are likely to generate feelings of ill-will towards certain breeds of dogs. They may also help generate an overall feeling that all dogs should be strictly controlled for the sake of community safety.
Chapter VIII: Animal Welfare Legislation in NSW

Introduction

In the previous chapter detailed information was provided about the visibility levels of various categories of captive animals. Visibility was established against three criteria: their level of direct popular visibility; their level of indirect popular visibility via the mass media; and the extent to which the state monitors them on behalf of its citizens. In Table III, the findings from the previous chapter are summarised and each category of animal is given a weight according to its level of visibility as assessed against the three visibility criteria. That visibility weight is categorised as very low, low, moderate, high, or very high. To aid interpretation each visibility weight is given a numerical representation, with ‘1’ signifying the lowest level of visibility and ‘5’ signifying the highest.
Table III: Captive Animal Visibility Levels

<table>
<thead>
<tr>
<th>Category</th>
<th>Direct Popular Exposure</th>
<th>Indirect Popular Exposure via the Media</th>
<th>Indirect Exposure via the State</th>
<th>Overall Visibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibited, Sport and Gaming Animals</td>
<td>High (4)</td>
<td>High (5)</td>
<td>Very High (5)</td>
<td>14</td>
</tr>
<tr>
<td>Companion Animals</td>
<td>Very High (5)</td>
<td>Very High (5)</td>
<td>Low (2)</td>
<td>12</td>
</tr>
<tr>
<td>Research and Education Animals</td>
<td>Very Low (1)</td>
<td>Moderate (3)</td>
<td>Very High (5)</td>
<td>9</td>
</tr>
<tr>
<td>Law Enforcement and Assistance Animals</td>
<td>Moderate (3)</td>
<td>Low (2)</td>
<td>Low (2)</td>
<td>7</td>
</tr>
<tr>
<td>Agricultural Animals</td>
<td>Low (2)</td>
<td>Moderate (3)</td>
<td>Low (2)</td>
<td>7</td>
</tr>
</tbody>
</table>

The task for the remainder of this section is to contrast the various levels of visibility with the level of statutory interest protection afforded different categories of animals in the state of NSW. The purpose in doing so is to provide evidence which either supports or refutes the hypothesis that high visibility is beneficial to animals to the extent that it is associated with strong statutory interest protection.
Legislative Analysis Methodology

Many hundreds of pieces of legislation impact on the lives of captive animals. Not all those statutes are analysed here. For the purpose of identifying whether a correlation exists between visibility and statutory welfare protection, only those Acts that have been specifically constructed as animal welfare tools will be considered. The statutes used for this study are also limited because the study examines four species of animal only. This is done for reasons of manageability. Only statutory articles pertaining to those four species are included in the legislative analysis. The animals under consideration are:

- hens
- rabbits
- horses
- dogs.

The animals were selected based on a number of criteria. First, they are common animals, meaning they do not constitute special cases. Furthermore, they are animals that live in NSW in large numbers, and they have been the subject of legislation for many decades. Finally, all four animals are able to occupy more than one category which makes them ideal for tracking fluctuations in welfare provisions.

Because there are many diverse ways in which animals may be used to generate benefit for humans, this study will be limited to two types of animal uses, for each of the four species (where available). In some cases that will necessitate a repetitive look at some
statutes. In other cases it will require reference to a prohibited practice. The animal uses selected for analysis have been chosen in order to be diverse. They have also been selected because they capture common animal uses that many people are likely to associate with the species of animal under consideration. The reason animal uses have been specifically tied to certain animals, as opposed to using generic provisions – for example, ‘animals in the zoo’ or ‘animals at a farm’ – is because the regulations are at times species-specific. By examining animal uses in relation to a particular species of animal, this analysis is solidly grounded in the detail of the legislation and is not based on abstract notions or generalisations. The animal uses analysed here are outlined in Table IV.
## Table IV: Animal Uses Analysed

<table>
<thead>
<tr>
<th></th>
<th>Hens</th>
<th>Rabbits</th>
<th>Horses</th>
<th>Dogs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agricultural Animals</strong></td>
<td>Hens raised for meat</td>
<td>Rabbits raised for food</td>
<td>Horses raised for meat</td>
<td>Dogs raised for meat</td>
</tr>
<tr>
<td></td>
<td>Hens raised for eggs</td>
<td>Rabbits raised for their pelt</td>
<td>Horses raised for leather</td>
<td>Dogs raised for their pelt</td>
</tr>
<tr>
<td><strong>Research and Education Animals</strong></td>
<td>Hens used for research and education purposes</td>
<td>Rabbits used for research and education purposes</td>
<td>Horses used for research and education purposes</td>
<td>Dogs used for research and education purposes</td>
</tr>
<tr>
<td></td>
<td>No further example available</td>
<td>No further example available</td>
<td>No further example available</td>
<td>No further example available</td>
</tr>
<tr>
<td><strong>Exhibited, Sports and Gaming Animals</strong></td>
<td>Cockfighting</td>
<td>Rabbits in zoos</td>
<td>Horses used in rodeos</td>
<td>Dogs performing in circuses</td>
</tr>
<tr>
<td></td>
<td>Hens in petting zoos</td>
<td>Rabbits used in film and television</td>
<td>Horses used for flat races</td>
<td>Dogs in competitive displays</td>
</tr>
<tr>
<td><strong>Law Enforcement and Assistance Animals</strong></td>
<td>No appropriate examples available</td>
<td>No appropriate examples available</td>
<td>Police horses</td>
<td>Assistance dogs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No further example available</td>
<td>Security (guard) dogs</td>
</tr>
<tr>
<td><strong>Companion Animals</strong></td>
<td>Hens kept at homes in small numbers</td>
<td>Rabbits kept at homes in small numbers</td>
<td>Horses kept at homes in small numbers</td>
<td>Dogs kept at homes in small numbers</td>
</tr>
<tr>
<td></td>
<td>No further example available</td>
<td>No further example available</td>
<td>No further example available</td>
<td>No further example available</td>
</tr>
</tbody>
</table>

128 The NSW *Animal Research Act 1985* does not differentiate between research and education.
129 These are small animal exhibits where children are encouraged to handle the animals. They often travel to schools and child care facilities.
130 Competitive displays are often referred to as ‘dog shows.’ They are animal exhibits where people show their animals before judges and prizes are awarded based on a range of criteria.
131 The statutory analysis of this example will include various commercial provisions for Companion Animals, such as legal requirements for pet shops. However, it does not include breeding-specific requirements.
Listed alphabetically, the instruments analysed for this section are:

Statutes and regulations:
- NSW Animal Research Act 1985 (ARA)
- NSW Animals Research Regulation 2005 (ARR)
- NSW Exhibited Animals Protection Act 1986 (EAPA)
- NSW Exhibited Animals Regulation 2005 (EAPR)
- NSW Prevention of Cruelty to Animals Act 1979 (POCTAA)
- NSW Prevention of Cruelty to Animals (General) Regulation 2006 (PCAR)

Enforceable codes of practice (state and federal):\(^{132}\)
- Animal Welfare Code of Practice No. 1 – Companion Animal Transport Agencies
- Animal Welfare Code of Practice No. 2 – Animals in Pet Shops
- Animals Welfare Code of Practice No. 5 – Dogs and Cats in Animal Boarding Establishments
- Animal Welfare Code of Practice No. 8 – Animals in Pet Grooming Establishments
- Animal Welfare Code of Practice No. 9 – Security Dogs
- Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th edition 2004

\(^{132}\) The NSW DPI Animal Welfare website states that although certain codes have been specifically identified in POCTAA’s Regulations ‘[i]t is not an offence if animals are not kept precisely as specified in the Codes but referencing them makes them admissible in proceedings for a related offence in the Act or Regulations.’ It goes on to say that ‘[e]ven if a code is not referenced into the Regulation, it is still regarded as the minimum standard by which livestock should be kept’ (NSW DPI 2004a). That explanation does not make it clear what the distinction is between codes that are named in the act and codes that are not. It seems likely that lawyers would try to use unnamed codes as evidence in support of good or poor animal welfare standards, subject to the magistrate’s discretion. Therefore, it seems appropriate to conclude that referenced codes carry a heavier legal weight than those that are not, but the distinction between the two is small. In order to differentiate between the two types of codes, for the purposes of this study the word ‘enforceable’ is used to refer to those codes that are specifically referenced, and ‘non-enforceable’ to refer to those that are not. However, it is acknowledged that the distinction between them is not that clear.
- Code of Practice for the Welfare of Animals Used in Rodeo Events
- Code of Practice for the Welfare of Animals in Films and Theatrical Performances
- General Standards for Exhibiting Animals in New South Wales
- Guidelines for the Pinioning of Birds in NSW
- Standards for Exhibiting Circus Animals in New South Wales

Non-enforceable codes of practice (state and federal):
- Guidelines for the Care and Housing of Dogs in Scientific Institutions
- Code of Practice for the Care and Training of Assistance Dogs in Correctional Centres
- Fact Sheet 16: Guidelines for Minimum Standards for Keeping Horses in Urban Areas
- Guidelines for the Housing Rabbits in Scientific Institutions 2003
- Model Code of Practice for the Welfare of Animals: Animals at Saleyards
- Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits
- Model Code of Practice for the Welfare of Animals: Land Transport of Horses
- 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
- Policy on the Care of Dogs Used for Scientific Purposes

Table V outlines which documents apply to which animal uses.
Table V: Animal Uses and Regulatory Instruments

<table>
<thead>
<tr>
<th>Animal Use</th>
<th>Regulatory Instruments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hens used for research and</td>
<td>Regulation is provided by ARA, ARR and Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th edition 2004.</td>
</tr>
<tr>
<td>education purposes</td>
<td></td>
</tr>
<tr>
<td>Cockfighting</td>
<td>Use of fowl in this way is prohibited (POCTAA S18).</td>
</tr>
<tr>
<td>Hens in petting zoos</td>
<td>Regulation is provided by POCTAA, PCAR, EAPA, EAPR, Guidelines for the Pinioning of Birds in NSW and General Standards for Exhibiting Animals in New South Wales.</td>
</tr>
<tr>
<td>Hens kept at homes in small numbers</td>
<td>Regulation is provided by POCTAA and PCAR.</td>
</tr>
<tr>
<td>Rabbits raised for food</td>
<td>Regulation is provided by POCTAA, PCAR and Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits.</td>
</tr>
<tr>
<td>Rabbits raised for their pelt</td>
<td>Regulation is provided by POCTAA, PCAR and Model Code of Practice for the Welfare of Animals: Intensive Husbandry of Rabbits.</td>
</tr>
<tr>
<td>Rabbits used for research and</td>
<td>Regulation is provided by ARA, ARR and Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th edition 2004 and Guidelines for the Housing Rabbits in Scientific Institutions 2003.</td>
</tr>
<tr>
<td>education purposes</td>
<td></td>
</tr>
<tr>
<td>Rabbits in zoos</td>
<td>Regulation is provided by EAPA, EAPR, POCTAA, PCAR and General Standards for Exhibiting Animals in New South Wales.</td>
</tr>
<tr>
<td>Rabbits used in film and television</td>
<td>Regulation is provided by POCTAA, PCAR and Code of Practice for the Welfare of Animals in Films and Theatrical Performances.</td>
</tr>
<tr>
<td>Rabbits kept at homes in small</td>
<td>Regulation is provided by POCTAA, PCAR, Animal Welfare Code of Practice No 1 – Companion Animal Transport Agencies and Animal Welfare Code of Practice No 2 – Animals in Pet Shops.</td>
</tr>
<tr>
<td>numbers</td>
<td></td>
</tr>
<tr>
<td>Horses raised for meat</td>
<td>Horses are not raised specifically for meat in NSW. It is legal to shoot free-living horses and then process the carcasses at game meat abattoirs. However, there is no known functional game meat abattoir with the capacity to process horses currently operating in NSW (Srizich, personal communication, 2 January 2007).</td>
</tr>
<tr>
<td>Horses raised for leather</td>
<td>Horses are not raised specifically for leather in NSW. It is legal to shoot free-living horses and then process the carcasses at game meat abattoirs. However, there is no known functional game meat abattoir with the capacity to process horses currently operating in NSW (Srizich, personal communication, 2 January 2007).</td>
</tr>
<tr>
<td>Horses used for research and</td>
<td>Regulation is provided by ARA, ARR and Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th edition 2004.</td>
</tr>
<tr>
<td>education purposes</td>
<td></td>
</tr>
<tr>
<td>Horses used in rodeos</td>
<td>Regulated is provided by POCTAA, PCAR, Model Code of Practice for the Welfare of Animals: Land Transport of Horses and Code of Practice for the Welfare of Animals Used in Rodeo Events.</td>
</tr>
<tr>
<td>Horses used for flat races</td>
<td>Regulation is provided by POCTAA, PCAR and Model Code of Practice for the Welfare of Animals: Land Transport of Horses.</td>
</tr>
<tr>
<td><strong>Police horses</strong></td>
<td>POCTAA does not apply to ‘the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties’ (POCTAA, s 35A).&lt;sup&gt;133&lt;/sup&gt;</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Horses kept at homes in small numbers</strong></td>
<td>Regulation is provided by POCTAA, PCAR, Model Code of Practice for the Welfare of Animals: Land Transport of Horses and Fact Sheet 16: Guidelines for Minimum Standards for Keeping Horses in Urban Areas.&lt;sup&gt;134&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Dogs raised for meat</strong></td>
<td>Dog flesh does not meet the definition of ‘meat’ or ‘game meat’ under the NSW Food Regulation 2004 (s 60). It is therefore not legal to raise and/or kill dogs for this purpose in NSW.</td>
</tr>
<tr>
<td><strong>Dogs raised for their pelt</strong></td>
<td>Federal law prohibits the import and export of dog fur in and out of Australia unless the importer or exporter has been given permission to do so by the federal Minister for Justice and Customs under the Customs (Prohibited Imports) Regulations 1956 (reg 4W). Although permission can be granted to import dog fur, the amendment was introduced in order to ‘ban trade in cat and dog fur’ (Ellison 2004). Therefore, where the Minister does grant a licence to import or export dog fur it is likely to be for specific purposes such as the importation of a taxidermy canine or fur for scientific analysis. The federal prohibition on international trade in dog fur, coupled with the prohibition on the slaughter of dogs for food in NSW, equates to an effective prohibition on the raising of dogs for their pelt in NSW.</td>
</tr>
<tr>
<td><strong>Dogs used for research and education purposes</strong></td>
<td>Regulation is provided by ARA, ARR, Australian Code of Practice for the Care and Use of Animals for Scientific Purposes 7th edition 2004, Policy on the Care of Dogs Used for Scientific Purposes and Guidelines for the Care and Housing of Dogs in Scientific Institutions.</td>
</tr>
<tr>
<td><strong>Dogs performing in circuses</strong></td>
<td>Regulation is provided by EAPA, EAPR, POCTAA, PCAR, General Standards for Exhibiting Animals in New South Wales and Standards for Exhibiting Circus Animals in NSW.</td>
</tr>
<tr>
<td><strong>Dogs in competitive displays</strong></td>
<td>Regulation is provided by POCTAA and PCAR.</td>
</tr>
<tr>
<td><strong>Assistance dogs</strong></td>
<td>Regulation is provided by POCTAA, PCAR and Code of Practice for the Care and Training of Assistance Dogs in Correctional Centres.</td>
</tr>
<tr>
<td><strong>Security (guard)</strong></td>
<td>Regulation is provided by POCTAA, PCAR and Animal Welfare Code of Practice</td>
</tr>
</tbody>
</table>

<sup>133</sup> No further detail is provided and ‘the course of their duties’ is not defined. I sought clarification on this provision from the NSW RSPCA’s Senior Veterinary Officer. He responded that he was not aware of the clause. He further said he recalled a ‘prosecution against a police squad dog officer some years ago for leaving a dog in a hot car’ (Lawrie, personal communication, 17 July 2004). No further details were provided. As the limitations of ‘the course of their duties’ is not defined, it seems from the clause that police horses and dogs are largely exempt from the protections provided under POCTAA. However, a prosecutor may be able to demonstrate that a violation of the Act occurred while the animal was ‘off duty.’ Equally, it is reasonable to assume that if charges were brought against a police officer in relation to their treatment of a horse, the officer would seek to demonstrate that the animal was being used as part of the animal’s official duties. In 2005, a teenaged boy was attacked by a police dog who had escaped from the premises where the dog lived. The premises were a police officer’s private home. The victim’s parents sought to charge the police officer responsible for the dog. The charge did not proceed because the NSW Director of Public Prosecutions ruled the handler and dog were both exempt from the NSW Companion Animals Act because the dog was a police dog. That decision was made in opposition to the opinion of the Minister for Local Government who interpreted the exemption to apply only when the police animals are on duty, which was not the case in the situation under consideration (Tadros 2007:5). Although the exemption referred to in that case applies to a different act, the wording is equally ambiguous and in that particular case was interpreted to mean a blanket exemption applies. As the limitations of the POCTAA provision are also unclear, it is assumed that police horses and dogs are exempt from POCTAA. It is acknowledged, however, that the basic provisions of POCTAA may be applicable in some cases, subject to judicial interpretation. |

<sup>134</sup> Some local council areas also have regulations in place governing Companion Animal horse ownership. Those regulations vary between local government areas. They are not included in this analysis.
Dogs kept at homes in small numbers

<table>
<thead>
<tr>
<th>dogs</th>
<th>No 9 – Security Dogs.</th>
</tr>
</thead>
</table>

The regulations are examined in relation to eight criteria. The welfare criteria used for this study have been selected because they are matters commonly addressed in animal protection legislation. They are also issues that have a significant impact on the wellbeing of captive animals. The welfare criteria are:

- **Food, water, drugs** – includes the regularity with which a person in control of an animal is required to make food and water available to the animal. It also includes the types of drugs that may be legally administered to the animal and the purpose of those drugs.
- **Health care** – includes the requirements placed upon a person in control of an animal to provide the animal with veterinary care. Included in this categorisation is legally required health care that may be administered by a specifically identified individual, who may be less qualified than a veterinarian (for example, a stockman or animal handler).
- **Freedom of movement** – includes the requirements placed upon a person in control of an animal to allow the animal freedom to stretch his/her body or wings and/or the provision of space in which the animal may exercise.
- **Conditions of confinement** – includes the regulatory specifications placed upon a person in charge of an animal in relation to the quality of the environment the animal is confined in. Included in this category is the extent to which the animal must be provided with environmental enrichment.
- Painful/frightening procedures – includes requirements that pain relief be applied where procedures are likely to cause the animal pain. It also relates to the extent to which a person in charge of an animal may lawfully cause the animal to suffer, including frightening the animal.

- Transportation – the conditions under which the animal is to be transported.

- Death – the conditions under which the regulations stipulate when the animal should die and the manner of that death. As argued in Chapter V, the concept of welfare applies only to living animals. Death is included here only to the extent that welfare provisions specifically stipulate the conditions under which certain animals may die. This section also deals with the minimum conditions required in the immediate lead up to an animal’s death.

- Enforcement – includes regulations pertaining to who may have access to the animal and how breaches of the legislation are to be reported to authorities. The enforcement section does not cover every detail of evidence gathering and court procedures. Rather, it is focused on the powers available to authorities. This criterion also includes a range of provisions people in control of an animal are required to meet, such as record keeping and the provision of experienced staff.

An example of how those provisions were assessed in relation to each type of animal is available in Appendix V.
Findings

The most striking feature of NSW’s animal use regulatory framework, when considered as a whole, is that of the twelve enforceable codes of practice, five pertain to the care of Exhibited, Sports and Gaming Animals; four pertain to the care for Companion Animals; and one relates to each of the groups of Agricultural Animals, Research and Education Animals, and Law Enforcement and Assistance Animals. As Exhibited, Sports and Gaming Animals and Companion Animals are the two most highly visible groups of captive animals, this suggests there is a correlation between high visibility and the state’s willingness to regulate how animals should be cared for.

However, the volume of protective legislation is not only predicated on an animal’s level of visibility as it pertains to their industrial use. Rather, species membership appears to also influence legislators; the animals most people can readily relate to are most likely to be well-protected. For example, when both enforceable and non-enforceable codes are considered together, of the full twenty-two codes, eight directly pertain to dogs. A further four cover other species of animals, while also regulating dogs to a large extent. No other species of animal is given such legislative attention. The reason dogs are singled out for special treatment is likely to be associated with the explanation given by the NHMRC to account for its guidelines governing dogs in research institutions. The introduction to those guidelines state that:

The use of companion animals such as dogs for medical and scientific research and teaching is strongly opposed by some members of the general public, and is generally a
highly emotive and controversial issue. Research institutions and investigators must therefore achieve high standards of care of dogs in order to meet community expectations (National Health and Medical Research Council 2005).

This suggests that even though animals used in research and education have a low level of direct popular visibility, dogs, because they are perceived to be predominantly Companion Animals, are singled out for special attention. Although the public will never see dogs undergoing research, many people are likely to have had a close relationship with a dog at some time in their life. On the basis of that relationship, it is thought necessary to be particularly vigilant in regulating how dogs are treated in research institutions. The code of practice for security dogs employs similar language. Dogs are also singled out for preferential treatment when considered in relation to less popular animals that may be maintained as companion animals. For example, if an animal in a pet shop becomes unwell, only a veterinarian may perform euthanasia on a dog. In the case of rabbits the same procedure may be performed by a ‘competent person’ (NSW DPI 2004c).

In NSW, Research and Education Animals are an exception to the rules which apply to all other captive animals. In the case of Research and Education Animals, a single Act and a single code constitute the enforceable component of that animal use regulatory system. The NSW Animal Research Act 1985 (ARA) and Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (hereafter referred to as the Animal Research Code) are generally not species-specific. But the non-enforceable codes which also apply to animal research do appear to reflect the popularity of certain species. For
example, in NSW, four non-enforceable, species-specific codes of practice have been
developed to guide the use of animals in research. These codes relate to rabbits, rats,
guinea pigs, and dogs. Rabbits, rats, and guinea pigs, along with mice, constitute a large
proportion of the animals used in research and education. They are also commonly
perceived to be ‘laboratory animals,’ meaning it may be reasonable to expect the
executive arm of government to develop guidelines regulating their care. By comparison,
dogs are used in research and education only on a small scale. In 2002-2003, in NSW,
over 72,000 ‘laboratory animals’ were used for ‘Human or Animal-Biological Research,’
while only 201 dogs and cats were used for the same purpose (NSW Agriculture
2004a:31). This raises questions about why the NSW DPI considers a code of practice
governing scientific dog use necessary, especially when codes have not been developed
for other animals that are used in larger numbers. It is possible that regulators at a state
level also consider that dogs should be afforded a stronger statutory framework because
many people ‘like’ them. Indeed, not only do many animals commonly used in research
and education not have a single code of practice governing their use, but dogs have two –
one state and one federal. Furthermore, the federal code is one of only two species-
specific codes. The other federal code regulates the scientific use of nonhuman primates.

The ARA and the Animal Research Code do not specify minimum standards for animal
care. The Code seeks to promote pre- and post-protocol care; minimise of the number of
animals used; and reduce the impact on the animals. Clause 1.16 of the Animal Research
Code states that:
Animals should be transported, housed, fed, watered, handled and used under conditions that meet species-specific needs. The welfare of the animals must be a primary consideration in the provision of care, which should be based on behavioural and biological needs (National Health and Medical Research Council 2004:6).

Yet despite this, the ARA and the Animal Research Code are both explicitly designed to allow animals used for research purposes to be housed, fed, caged, handled, and operated on in any way considered necessary by the researcher, for the purpose of generating the desired research results, so long as institutional approval is granted.

Turning now to the non-enforceable animal research codes, in the case of the one rabbit and two dog codes, it is not clear that they necessarily provide for substantially better conditions. The national NHMRC Policy on the Care of Dogs Used for Scientific Purposes (hereafter referred to as the Dog Policy) is particularly non-specific. For example, where the Animal Research Code states that ‘[o]nce an animal is allocated to a project, the investigator or teacher is responsible for the day-to-day monitoring of its wellbeing’ (National Health and Medical Research Council 2004:17), the Dog Policy states that ‘[t]he primary responsibility for the health and well-being of dogs used for experimental purposes lies with the investigator’ (National Health and Medical Research Council 2005). Overall, the Dog Policy appears to do little more than restate provisions already outlined in the Animal Research Code, yet the Dog Policy is not entirely without substance. On the issue of freedom of movement, the Dog Policy is more specific than the Animal Research Code and therefore may generate actual benefits for dogs. The Animal Research Code states only that ‘[t]he design and management of animal
accommodation should meet species-specific need’ (National Health and Medical Research Council 2004:6) and ‘[p]eriods of prolonged restraint or confinement should be avoided’ (National Health and Medical Research Council 2004:25). By contrast the Dog Policy states that:

When dogs are held for longer than 7 days within the institution, particular attention must be given to providing daily outdoor exercise. Animals should spend several hours in an outside run in contact with or insight of other dogs. Where an outside run is not available, attendants need to provide an opportunity for dogs to leave their normal cage for at least 30 minutes each day (National Health and Medical Research Council 2005).

The NSW animal research dog care document entitled *Guidelines for the Care and Housing of Dogs in Scientific Institutions* (hereafter referred to as the Dog Housing Policy) is, as a whole, more prescriptive than the Dog Policy. In relation to exercise it also states that the ‘minimum exercise period should be 30 minutes for healthy dogs’ (NSW Agriculture 1999). In addition, the Dog Housing Policy makes specific recommendations concerning food, social interaction, and enclosure size. However, despite this, it is important to recall that none of the recommendations contained in the Dog Policy, the Dog Housing Policy, or the rabbit code are directly enforceable. Because researchers are dependent on the NHMRC for funding, and the NSW state government for a research licence, some pressure may be applied to researchers who step substantially outside the parameters defined in the codes. But, where researchers are able to provide
justification for not meeting the codes’ standards, they are under no obligation to do so.

In the three years in which I inspected research facilities in NSW I did not see a single rabbit or dog enclosure that approximated the standards recommended in the codes. When asked why rabbits were not housed in floor pens, the housing standard recommended in the rabbit code, the usual response by researchers was that they had been given institutional approval not to do so.

Leaving Research and Education Animals, all other captive animals in NSW are provided with a set of basic protections outlined in the first few clauses of POCTAA. In brief, they are that:

- S5(1) A person shall not commit an act of cruelty upon an animal.
- S5(3)(b) where pain is being inflicted upon the animal, [a person shall]… take such reasonable steps as are necessary to alleviate the pain.
- S5(3)(c) where it is necessary for the animal to be provided with veterinary treatment, whether or not over a period of time, [a person shall]… provide it with that treatment.
- S6(1) A person shall not commit an act of aggravated cruelty upon an animal.
- S7(1)(a) A person shall not carry or convey an animal in a manner which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal.
- S8(1) A person in charge of an animal shall not fail to provide the animal with food, drink or shelter, or any of them, which, in each case, is proper and sufficient and which it is reasonably practicable in the circumstances for the person to provide.
- S11 A person shall not abandon an animal (NSW Government 2006a).
All other POCTAA provisions are more specific and relate only to certain animals under certain circumstances.

An examination of POCTAA as a stand-alone document lends support to the notion that low visibility equates to weak interest protection, and vice versa. First, animal sports that allow people to watch animals being hurt, injured or killed are either prohibited or curtailed. For example, the use of spurs, animal-baiting, animal fighting, bullfighting, animal-catching and coursing are all prohibited. Steeplechasing, hurdle racing and rodeos are restricted. Second, the two groups of animals most clearly bereft of statutory protection under POCTAA are animals used for law enforcement, and Agricultural Animals. They are the two groups of animals assessed as having the lowest level of overall visibility. In the case of Agricultural Animals, the requirement that animals be provided with exercise does not apply to them. More importantly, Section 24 of POCTAA outlines defences that may be evoked to avoid penalty in relation to any of the provisions contained in Sections 5–23. Those provisions overwhelmingly protect humans against charges of animal cruelty in relation to Agricultural Animals. In the case of Law Enforcement and Assistance Animals, Section 35A(2)(a) states that:

This act does not apply to the use and handling of police dogs and police horses by police officers, or drug detection dogs by officers of the Department of Corrective Services, in the course of their duties (NSW Government 2006a).

---

135 As noted earlier, Research and Education Animals are entirely excluded from POCTAA’s terms of reference.
The precise meaning of that provision is not clear but it appears to exempt that class of animal.

An examination of the other regulatory instruments that work alongside POCTAA further supports the suggestion that high visibility is legislatively advantageous. On top of the basic provisions contained in POCTAA, the EAPA provides further protection for some Exhibited, Sports and Gaming Animals and, as already noted, the EAPA’s associated codes provide an additional level of regulation on top of that. Indeed, the protections available to animals in circuses; animals in zoos (providing the Director-General of the NSW DPI does not grant an exemption to the exhibitor); those used in theatre and film; and Companion Animals when they are in the care of a transport, boarding or grooming agency are strong and comprehensive. In terms of the letter of the law, the conclusion reached by an analysis of all the regulations included in this study is that the animals best protected by the state are dogs in circuses.

That conclusion points to another observable phenomenon. As is the case with Research and Education Animals, the regulations are not only favourable to high-visibility animals, they also give preference to certain species – most notably, animals normally construed to be Companion Animals. The provision of exercise, conditions of confinement, and availability of health care will be used to highlight the point. Due to the large number of provisions, abbreviations are used to refer to provisions which recur continually. The minimum provisions, for each type of animal examined, are:136

136 This overview does not contain all clauses. The summary here provides only a list of abridged provisions. The points included tend to relate to provisions that constitute concrete, measurable, minimum
➢ Hens raised for meat – no requirement to provide exercise [no exercise]; birds not to be tethered [no tether]; shelter provided within a 24 hour period [shelter]; up to 13 birds per square metre in ventilated sheds; birds checked daily [checked daily]; veterinary care as required [veterinary care].

➢ Hens raised for eggs – no exercise; no tether; shelter; up to three birds per battery cage; up to 12 birds per square metre in sheds; checked daily; veterinary care.

➢ Hens in research facilities – restraint for the shortest time possible [limited restraint]; removal from restraint if it causes harm; kept in a way that meets their species-specific needs unless permission is granted not to do so [species specific needs meet]; researcher or teacher responsible for day-to-day care [researcher responsible for care]; unexpected adverse health effects to be reported to the AEC [adverse reactions reported].

➢ Hens at petting zoos – animals to be permitted to exercise in a 24 hour period [exercise]; no tether; shelter; cages to provide animal with a reasonable opportunity to exercise [cage suitable for exercise]; cage size dictated by the Director-General (DG); cages to allow the opportunity to express natural behaviours, social interaction and the ability to flee other animals; off-exhibit enclosures one-third the size of exhibit enclosures [off-exhibit enclosures]; animals not be housed in other enclosures without written permission from the DG; the DG may grant exemptions; checked daily; routine check by a veterinarian annually; the DG to be notified within 24 hours of the widespread outbreak of disease.

standards, as opposed to ‘motherhood’ statements. Also, the provisions mentioned tend to relate to more significant issues. For example, in the codes regulating animals in circuses and zoos, a myriad of detail is included outlining the types of containers food should be stored in, the type of containers animals should be fed in, and how the food preparation area should be cleaned. Likewise, the Animal Research Code contains specific details about who should sit on Animal Ethics Committees and how they should conduct their meetings. No such detail is included in the summary below. Furthermore, only legal animal uses are acknowledged in this summary.
- Hens in homes – exercise; no tether; shelter; cage suitable for exercise; veterinary care.

- Rabbits raised for food – not to be tethered for an unreasonable length of time by an unreasonably short tether [reasonable use of tether]; shelter; each adult rabbit to have 0.56 square metres of space; enclosures to be 0.45 metres high; checked daily; veterinary care; records to be kept of ill-health [records kept].

- Rabbits raised for pelt – reasonable use of tether; shelter; each adult rabbit to have 0.56 square metres of space; enclosures to be 0.45 metres high; checked daily; veterinary care; records kept.

- Rabbits in research facilities – limited restraint; removal from restraint if it causes harm; species-specific needs meet; rabbits should be housed in group pens or enriched cages unless permission is granted not to do so; pens should be 2 metres in one direction and 0.75 square metres in total; cages should be 0.8 metres in one direction and 0.64 square metres in total; rabbits should be provided with a place to hide; researcher responsible for care; adverse reactions reported; animals to be monitored daily [monitored daily].

- Rabbits in zoos – reasonable use of tether; shelter; cage suitable for exercise; cage size dictated by the DG; cages to allow the opportunity to express natural behaviours, social interaction and the ability to flee other animals; off-exhibit enclosures; animals not to be housed in other enclosures without written permission from the DG; the DG may grant exemptions; checked daily; routine check by a veterinarian annually; the DG to be notified within 24 hours of the widespread outbreak of disease; veterinary care to be provided when needed.

- Rabbits in theatre and film – animals to be exercised regularly [regular exercise]; reasonable use of tether; shelter to be provided; cage suitable for exercise; compatible species to be allowed time for social interaction [social interaction]; non-compatible
animals to be kept apart; a veterinarian may be required to be on set; animals and enclosures to be checked daily.

- Rabbits in homes – reasonable use of tether; shelter; cage suitable for exercise; veterinary care.
- Horses in research institutions – limited restraint; removal from restraint if it causes harm; species-specific needs meet; researcher responsible for care; adverse reactions reported.
- Horses in rodeos – exercise; reasonable use of tether; shelter; cage suitable for exercise; horses not to be transported for longer than 24 hours unless food, water and an exercise area are provided; horses in shoots must be released immediately if it appears they may injure themselves; in extreme temperatures horses awaiting transportation to be provided with shelter; health to be checked following transportation [health check after transportation]; all animals to be checked for good health on the day of a competition; a veterinarian must be on site or on call while animals compete [veterinarian on call]; veterinary care.
- Racehorses – exercise; reasonable use of tether; shelter; in extreme temperatures horses awaiting transportation to be provided with shelter; cage suitable for exercise; all animals should have a health check following transportation; veterinary care.
- Horses as companions – exercise; reasonable use of tether; tethered horses require supervision and access to food provided twice daily and water; the tether must be nine metres in length; shelter to be provided in a 24 hour period; in extreme temperatures horses awaiting transportation to be provided with shelter; cage suitable for exercise; in yards 3 metres wide and 20 square metres roofs 3.7 metres high; fences 1.7 metres high and easily visible; gates 3 metres wide; stables 3.7 metres wide and 3.7 metres deep, and the roof 2.75 metres high; stable doors 1.2 metres
wide and 2.4 metres high; the area cleaned and bedding replaced daily; veterinary care; health check after transportation.

- Dogs in research facilities – limited restraint; removed from their restraint if it causes them harm; species-specific needs meet; dogs held for longer than 7 days should be able to leave their cage to exercise for 30 minutes each day unless permission is granted not to do so; dogs held for a long time should have an enclosure of 4.5 square metres for two average-sized dogs unless permission is granted not to do so; researcher responsible for care; adverse reactions reported.

- Dogs in circuses – exercise; reasonable use of tether; shelter; cage suitable for exercise; animals to have the opportunity to express natural behaviours; social interaction and the ability to flee other animals available; off-exhibit enclosures; animals may not be housed in other enclosures without written permission from the DG; enclosures should be 4.5 square metres for two average-sized dogs; running leads must be 4 metres long; the DG may grant exemptions to these provisions; a health check every six months; the DG to be notified within 24 hours of the widespread outbreak of disease; checked daily; medical records to travel with the circus; dogs’ teeth and gums to be maintained by feeding tough meat and bones; veterinary care.

- Dogs at dog shows – exercise; reasonable use of tether; shelter; cages do not need to provide the animal with a reasonable opportunity to exercise so long as this does not cause unnecessary pain and the animal is the cage no longer than 24 hours; veterinary care.

- Assistance dogs – exercise; reasonable use of tether; shelter; cage suitable for exercise; while being trained at correctional facilities each dog should be provided with an exercise area of 8 square metres; exercise for at least 30 minutes twice a day or a walk on a lead for 20 minutes daily; dogs to be provided with a hygienic
environment; kennels to be cleaned daily; kennels to be 3.5 square metres; dogs to be preferably housed separately; a raised sleeping area to be provided; dogs trained at correctional facilities to be vaccinated and wormed; checked daily; veterinary care; a veterinarian to be called if a specified set of physical ailments are displayed.

- Security dogs – exercise; reasonable use of tether; shelter; cage suitable for exercise; kennels to be 3.7 metres long, 1.8 metres wide and 1.8 metres high; dogs to be provided with a hygienic environment; kennels to be cleaned daily; a raised sleeping area to be provided; dogs to be housed singly or in compatible pairs; dogs to be taken to an exercise area twice a day for 30 minutes or two walks on a lead of 15 minutes each; dogs to be kept free of disease and distress; dogs to be vaccinated every 12 months; dogs to be checked twice a day; veterinary care; a veterinarian to be called if a specified set of physical ailments is displayed.

- Companion animal dogs – exercise; reasonable use of tether; shelter; cage suitable for exercise; dogs in pet shops to receive ten minutes exercise twice a day; dogs at boarding facilities should have ten minutes exercise twice a day; dogs left overnight at grooming agencies to be given the opportunity to exercise; dogs at pet shops and boarding facilities to be provided with enclosures that meet their physical and behavioural needs; enclosures designed to minimise the risk of injury or illness; enclosures to be cleaned once a day; dogs housed singularly or in compatible pairs; unvaccinated dogs not to be accepted for transportation; only vaccinated dogs to be sold; veterinary care; a veterinarian to be called if a specified set of physical ailments is displayed.
In the case of hens, those in petting zoos appear to have the strongest protection in relation to freedom of movement, conditions of confinement and the provision of health care. Hens in backyards do not have the host of positive provisions hens in petting zoos are provided, but are permitted a significant degree of freedom of movement denied hens used for agricultural purposes. Furthermore, the protections available to Companion Animal hens are in a sense fundamental, meaning the regulator does not have the power to limit them. In the case of Research and Education Animals, the institutional AEC and ARRP have the authority to strip animals of protections they would otherwise be entitled to. In the case of Exhibited, Sports and Gaming Animals the DG has the authority to do likewise. However, even if the executive chooses to limit some of the protection available to Exhibited, Sports and Gaming hens, the hens nonetheless remain protected by the fundamental protections afforded all Companion Animals by POCTAA. This is because where the EAPA comes into conflict with POCTAA, POCTAA prevails. Yet POCTAA cannot be applied to animals in the research setting.

Hens in research laboratories appear to be more strongly protected than Agricultural Animals. This is because the Animal Research Code foreshadows favourable conditions, and ensures the way in which research hens are housed is closely monitored. However, while the regulatory supervision available to hens in research facilities may result in favourable enclosures and good health care, those provisions may also be removed as the regulator sees fit. This phenomenon is more easily observed in the case of rabbits because minimum housing sizes are specified. An Agricultural Animal rabbit housed in a cage should be provided with 0.56 square metres of space. A Research and Education rabbit
should be provided with 0.64 square metres of space, including 0.8 metres in one
direction, in order to allow the rabbit to stretch his or her legs. So, in relation to the
provision of space, a rabbit would be better off being housed in a research facility than a
fur farm. However, the space provision in the research facility could be severely
restricted. For example, if a researcher was granted permission to undertake research into
muscle cramping in rabbits, it may be necessary to house the rabbit in a cage of similar
size to the rabbit’s body. If that was to occur, the housing conditions may change in such
a way that the rabbit would have more favourable conditions at a fur farm. The minimum
cage size in a fur farm cannot be further reduced. This means that in the case of research
and education, there are no true minimum standards and animals may be exposed to poor
conditions which would not be permitted in other industries. This phenomenon may best
be described as the concept of ‘necessary suffering.’

It seems clear that the concept of necessary suffering does influence the structure of
animal protection legislation. But it is interesting to note that the only class of animal
without minimum interest protection of any sort is Research and Education Animals.
That is also the class of animal with the lowest level of direct popular visibility. What this
suggests is that although necessary suffering does influence animal protection regulation,
it seems that what constitutes ‘necessity’ may be influenced by visibility. Consider
another example. In the case of transporting hens to slaughter, the code permits stocking
density to increase by 50 per cent. That translates to around 25 birds per square metre.
Chicken growers may argue that it is necessary to increase stocking densities in this way
because it is uneconomical to transport poultry in bigger containers. Yet in the case of
agencies that generate their profit by transporting dogs, the code stipulates that dogs in
transit must be provided with ‘sufficient space for animals to rest, stand, stretch fully and
turn around’ (NSW DPI 2004b). Assuming dog transport agencies could generate greater
profit by transporting more dogs in a single journey, a principle other than pure
economics must be informing decisions about which animals are well-protected by the
law and which are not. Otherwise, people who make their living transporting dogs would
be able to argue for weaker welfare protection on the basis of increased economic gain, as
is likely to be the case with chicken growers. Alternatively, it may be argued that poultry
do not mind a high stocking density, but dogs do. However, such an explanation begs the
question why, if poultry are content being housed at a rate of 25 birds per square metre,
are they not permitted to be stocked at that density at all times?

However, the link between visibility and strong statutory protection is not entirely linear
and there is a range of inconsistencies and discrepancies that do not support a visibility
hypothesis. The most striking anomaly is the absence of any code of practice or
guidelines regulating the horseracing industry. POCTAA places limits on how
steeplechase and hurdles races may be conducted. Furthermore, in NSW, the DPI has
published a fact sheet entitled *Protecting the Welfare of Horses Competing in Bush Races
in NSW*. There is also an enforceable code of practice for rodeos. Yet, despite this, horses
used for flat races in NSW have no more protection than that afforded by POCTAA. This
is an unanticipated omission. It is beyond the scope of this study to undertake research
into why there is no code of practice for horseracing. However, in the absence of
research, a number of hypotheses readily present themselves. The first issue worthy of
exploration is the considerable amount of revenue the state generates through gaming activity. That revenue stream, combined with the lobbying capacity of clubs and pubs which also financially benefit from horseracing, and the influence of the horseracing industry itself, may account for the anomaly. The Australian Racing Board (ARB) does have its own rules. Most of the rules do not pertain to animal welfare, although a small number of the provisions may be argued to protect horses from harm. For example, the Australian Rules of Racing AR.175(h) prohibits the administration of prohibited substances to horses (Australian Racing Board 2007). Yet an anomaly still exists when one considers that in the case of rodeos, the Australian Professional Rodeo Association has its own set of animal welfare rules, and in addition the NSW state government has also developed an enforceable code of practice. The Code of Practice for the Welfare of Animals Used in Rodeo Events contains provisions such as 2.2 which states that ‘[a]nimals for all events should be inspected on site on the day of the rodeo by a veterinarian when available or by an experienced stockperson’ (NSW DPI 2005a). Why the same is not in place for horses used in flat races is not clear.

Other examples of high visibility animals not legislatively benefiting from that status are also available. For example, it is an offence to fail to provide a companion animal dog with exercise in a 24 hour period. However, that provision is waived in the case of dogs at dog shows. In that particular case, although the animal’s visibility increases, the protection available to the animal diminishes. Furthermore, there is a range of inconsistencies in the amount of exercise dogs must be provided under various circumstances. Those inconsistencies do not appear to follow a discernible pattern. For
example, security dogs must be exercised twice a day. That exercise must consist of a 30 minute visit to an exercise area or a 15 minute walk on a lead. By contrast, dogs in pet shops must be exercised twice a day. The exercise may take the form of ten minutes of free exercise or a ten minute walk on a lead. Dogs being trained at correctional facilities must also be exercised twice a day, but in their case, the exercise must be two 30 minute visits to an exercise area or two 20 minute walks on a lead. The cause of, or purpose behind, such variations is not clear. In order to understand why they have come about, interviews would need to be conducted with those responsible for creating the relevant regulation. Such research is beyond the scope of this study.

Conclusions

An analysis of NSW animal protection legislation lends support to the proposition that there is a relationship between an animal’s visibility and the level of welfare protection the state is willing to provide the animal via its regulatory arrangements. The nexus is not without exceptions, however, overall, it is Exhibited, Sports and Gaming Animals and Companion Animals who are most strongly protected, with Exhibited, Sports and Gaming Animals being the more favoured of the two. Research and Education Animal use is highly regulated but that regulation does not translate into strong protection against harm. Agricultural Animals have a small number of basic protections, but they are not comparable to those afforded Exhibited, Sports and Gaming Animals or Companion Animals. Law Enforcement Animals are not well-protected, but Assistance Animals have
similar protections to those afforded Companion Animals generally. In addition, animals normally perceived to be Companion Animals, such as dogs, are more strongly protected than other species. This is most likely due to the pressure on the state to strongly regulate their use – regardless of whether the public can see how dogs are being used by various industries – because members of the public are able to empathise with dogs based on their own first-hand experience.

Critics may respond to the analysis carried out above in a number of ways. First, it may be asserted that Companion Animal owners are not a well-organised group with a peak representative body. That may limit the extent to which Companion Animal owners are able to lobby government to secure limitations on animal welfare provisions. By contrast, farming and research interests are well-organised; the former is represented by its own political party and multiple peak bodies, while the latter is efficiently organised through the influential higher education sector. The politicised nature of those two groups means that they are able to influence government in ways conducive to their interests. Where the use of animals to generate wealth is at odds with the welfare of the animal, those that are well-organised may be better placed to ensure their interests prevail. An analysis of the lobbying process is beyond the scope of this study, so that criticism must remain unanswered in this dissertation.

Critics may also respond by arguing that strong protection for Companion Animals is consistent with a necessary suffering explanation for legislative inconsistencies, because although Companion Animals have a high level of visibility, they are not economically
productive. That means that the state can easily prohibit cruelty against them without curtailing commerce. Furthermore, it may be argued that those who generate wealth via the use of Exhibits, Sports and Gaming Animals may benefit from strong animal welfare statutory intervention because the highly visible nature of their animal use is conducive to consumer support for such provisions. That qualification acknowledges the influence of visibility, but still relies on an analysis underpinned by arguments centred on the concept of necessary suffering. That is, there is little need for animal exhibitors to lobby for weak welfare provisions because in many cases they would be counterproductive to their economic purpose – which is to encourage people to spend money looking at their animals. Given those possible objections, in order to strengthen the argument in favour of a relationship between high visibility and strong interest protection, the matter must be considered from another perspective. That is the task of Chapter IX.
Chapter IX: Animal Welfare Legislation in Nineteenth-Century Britain

Introduction

In Chapter IV, the reformist mood that propelled nineteenth-century legislators to create protective statutes for animals was described. That legislation had the effect of drawing animals explicitly into political society by placing limitations on how humans were permitted to treat them. Those limitations were backed by the authority of the state. However, as is the case now, early animal welfare laws were inconsistent and did not afford all animals the same level of protection. The purpose of this section is to revisit the question: is there a link between high visibility and strong statutory interest protection for animals? An answer to that question will be provided via reference to the protection afforded animals in Britain during the nineteenth century.

The reason this section moves away from contemporary animal protection arrangements, and towards early British animal welfare laws, is that the modern animal industrial complex is highly homogenised. There is little difference in the methods that developed countries use to farm animals (Garner 2006b:107), conduct research on animals, exhibit animals, or maintain them as pets. What difference does exist tends to reflect geographic

137 Parts of this section have been included in a journal article which is currently under review with the journal Environmental History. Parts of this section were also presented at the University of Sydney’s Labour History seminar in 2006. That presentation was titled ‘The Other Coal Miner.’ Some parts were also presented at the 2007 Australian Victorian Studies Association conference Victorian Beginnings. That paper was titled ‘The Victorian Era, Exposure to Animals and the Origins of the Animal Protection Movement.’
or climatic variations. Cultural differences also account for some variations. For example, bullfighting is lawful in parts of Spain but not in Australia. However, as a general principle, the industrial use of animals is undertaken on a comparable basis in all western countries. Moreover, the views expressed by animal protection advocates throughout the western world suggest there is a common perception in many countries that Agricultural Animals and Research and Education Animals are not well-protected by the state, while Companion Animals are afforded preferential treatment. Therefore, given the homogeneity of the animal industrial complex, similarities in visibility levels, and consistencies in the views put forward by animal protection organisations, it seems unlikely that repeating the analysis carried out in the previous chapter, in relation to another jurisdiction, would lead to markedly different conclusions. Furthermore, performing the same analysis again would not adequately resolve the dilemma identified at the end of the last chapter. That is, it would not adequately resolve that puzzle is that throughout the developed world Companion Animals are both non-economically productive and high-visibility animals.

Therefore, in order to advance understanding of the nexus between visibility and statutory interest protection, it is necessary to consider the issue of animal visibility in relation to a jurisdiction where at least one of the three variables under consideration is different in a marked way. Those variables are: a) the way animals are used economically; b) the visibility levels generated by various types of animal use; and c) the detail of animal welfare legislation. In order to do that, attention is turned to Great Britain in the nineteenth century. That time in English history provides a useful counterpoint to
the preceding legislative examination because both the economic use of animals and their visibility levels were different in marked ways. Furthermore, the types of animals most strongly protected by animal welfare legislation in early nineteenth-century Britain were also different. It is the detail of which animals were most readily protected from harm, considered in relation to that period’s system of animal use, which makes this research approach particularly relevant.

However, pursuing such a line of inquiry is only possible because, despite the differences, Westminster enacted animal protection legislation in the nineteenth century that was informed by the same principles that underpin animal welfare laws in the present era. For example, as is the case presently, early British animal protection statutes did not protect all animals against all harms. Rather, they protected some animals against cruel treatment under certain circumstances. Furthermore, animal welfare legislation of the period did not seek to challenge the legitimacy of human use of animal resources. What it sought to do was to protect some animals against the worst excesses of suffering by limiting an owner’s right to ‘cruelly beat,’ ‘abuse,’ or ‘ill-treat’ (Great Britain 1822) certain animals at certain times. What constituted such acts was left to the discretion of the court. At the same time, early British animal welfare statutes also outlawed certain objectionable behaviour. The advent of animal welfare law did not fundamentally challenge the long-established property relationship between humans and animals, nor did it allocate fundamental rights to animals. The philosophical principles underpinning the legislation have remained to this day. In short, by approaching the same question from the perspective of modernising Britain it is possible to discover whether the
visibility hypothesis is stronger or weaker than it appears to be so far because a different animal use environment, with consistent animal protection legislative principles, benefited different animals.

Methodology

The methodology used in this chapter is different to that deployed in the preceding two chapters. There are several reasons why this is necessarily the case. First, as MacDonagh argues, in the early stages of legislative activity in a new regulatory area, the state tends to be inexperienced in dealing with the issue under consideration (MacDonagh 1958:59). In practice, that means that early animal protection laws lacked the complexity found in current animal welfare arrangements. Furthermore, in Britain in the nineteenth century, animal protection laws were stand-alone instruments. That makes them unlike current animal protection acts, which are complex and must be read in conjunction with regulations and codes of practice. Furthermore, early animal protection legislation regulated certain animal uses only and for many decades captured only a small number of all captive animals. When combined, these factors mean an analysis of Martin’s Act could not be performed in the manner of the analysis of contemporary NSW legislation undertaken earlier. Nor can the detail of early British and contemporary Australian animal welfare laws be readily compared. Rather, in order to develop a picture of the way bias operated in early animal welfare arrangements, and the role of visibility in influencing that bias, it is necessary to examine the early British situation in isolation. In
doing so, however, it is important to consider more than just the content of statutes – although the detail of animal welfare laws is important. To that end, unsuccessful bills, and other primary and secondary source documentation, are also utilised in this section.

Hansard records are used in this study to learn more about why only certain animals were afforded legislative protection in Britain in the early nineteenth century. However, before proceeding it is necessary to say something about the nature of those records. Early nineteenth-century Hansard is not considered an accurate record of parliamentary debates because only select discussions were transcribed (The House of Commons Information Office 2003). It is commonly thought that during that period only the most important debates and speeches were recorded. Yet, despite Hansard’s incomplete nature, a number of parliamentary discussions about animal protection conducted in the first half of the nineteenth century do exist. Although it is likely some animal welfare debates were not documented, the parliamentary speeches and discussions that did survive arguably reveal a considerable amount about the mindset of those engaged in the debate, especially when those records are read in conjunction with unsuccessful bills and the content of animal welfare acts. Given that, Hansard is utilised as supporting evidence in this section, although it is acknowledged that the available records do not represent all parliamentary debates about animals that took place in Britain in the nineteenth century.
The Political Climate in Early Nineteenth-Century Britain

Not only was the level and type of animal exposure experienced by those living in the United Kingdom in the nineteenth century markedly different to that of the present era, the political environment was also different in important ways. Modernising Britain did not have a democratic political system according to current standards. Therefore, before proceeding it is necessary to say something about the nature of British politics at that time. The reason it is necessary to do so is that visibility is likely to be an issue of greatest significance in the case of democracies. As stated in Chapter VI, this study assumes that the popular will can, at least in part, be read into the content of animal welfare statutes. Given that, it is important to establish the extent to which democratic principles informed political life at the time animal welfare laws were first created.

The first national animal protection statute was enacted in Britain in 1822. Richard Ryder describes Westminster at the time as ‘a democratically elected legislature’ (Ryder 1989:86). Yet, in 1822, the franchise remained highly restricted. Middle-class English men received the vote in 1832 and in 1867 prosperous, urban, working-class men were also granted the right to vote (McWilliam 1998:17–18). In 1918 all men, and women over the age of 30 who owned property, became entitled to vote. Not only was the franchise limited, so too was the pool of parliamentary representatives. In 1822, Members of Parliament were predominantly aristocrats and landed gentry (Young 2001). Yet although such stringent class-based restrictions on direct political participation would be construed as undemocratic according to current standards, other important democratic elements had
already evolved in England by the early nineteenth century. For example, the practice of pamphleteering was commonplace, and was an effective means of widely propagating dissenting views. By the end of the seventeenth century, pamphleteering had helped establish a ‘public sphere’ of political opinion (Raymond 2003:25-26). Furthermore, disenfranchised citizens were free to lobby Members of Parliament and, as the Industrial Revolution progressed, class-based political mobilisation grew in strength and significance (McWilliam 1998:16–17). By the early nineteenth century the British Parliament had become increasingly sensitive to the public mood (MacDonagh 1958:58). Such elements suggest that although not a fully representative democracy according to contemporary norms, modernising England was considerably democratic for its time and Westminster was already more responsive to public opinion than is likely to be the case in a non-democratic system.

In addition, two years after the passage of Martin’s Act, the Society for the Prevention of Cruelty to Animals was founded. Its foundation membership included a number of distinguished individuals including Richard Martin MP (Ryder 1975:188), various members of the upper class, and, by 1835, members of the royal family (Ritvo 1987:129). A combination of the Society’s links to the upper class and its practical work bringing prosecutions for animal cruelty in London suggests the organisation was in a good position to communicate a popular message to those in power. Finally, as Westminster is located in the heart of London, there is no doubt that all Members of Parliament were directly exposed to animals used for transportation, entertainment and food on an ongoing basis. Hansard suggests that, for many MPs, their own direct contact with certain
animal uses was enough to persuade them that some animals were in need of legal protection.

In modernising Britain, the benefits humans sought to derive from animals were different to current economic animal use patterns in significant ways. At that time animals were used as the primary means of transportation for both humans and goods. They were the principal suppliers of power to the agricultural sector, and were also used to power machinery for manufacturing (Hribal 2003:443-444). In Britain in the nineteenth century:

- the number of horses and mules employed by England businesses increased from about 251,000 to 1,166,000. The amount working for private (non-agricultural) families swelled from 200,000 to 600,000. The figures for London cabs rose from one per every 1,000 people to (even with the increase in city populations) one per every 350 people, and the number of horse-driven, metropolitan buses went from 376 to over 1,000 (Hribal 2003:447).

Although the British rail system began to develop in the early 1800s, draught animals continued to provide the primary means of transportation throughout that century. As such, interaction with economically productive animals was part of everyday life (Radford 2001:18). Historian Harriet Ritvo writes that:
[Animals] figured prominently in the experience even of city dwellers [during the Victorian era]. The streets were full of cabhorses and carthorses; flocks of sheep and herds of cattle were driven to market once or twice a week; many urbanites raised pigs and chickens in their crowded tenements, or bred a variety of pets, from pigeons to rabbits to fighting dogs (Ritvo 1987:5).

Mike Radford agrees. He describes the highly visible nature of animals during the nineteenth century in the following way:

Horses, ponies and asses were ubiquitous, playing an essential role in agriculture, industry, transport, and the army. Many amusements centred on animals: hunting and horse racing for the aristocracy and their hangers-on, various forms of baiting and fighting for the lower orders. Bull-baiting involved tying a bull to a stake and setting one or more dogs upon it, the object being for the dogs to get hold of, and hang on to, the bull’s nose. Other animals used for baiting included bears and badgers. Bull-running was a variation on this, during which a bull was chased through the town until it became exhausted, whereupon dogs were set upon it (Radford 2001:18).

Animal-based entertainment was particularly popular at the time animal welfare laws began to evolve. Animal fights were arranged between any number of species (Moss 1961:13) and often included animals being tied to one another or having fireworks attached to their bodies in order to incite the animal and/or create a spectacle (Harwood 1928:270 and De Levie 1947:17–19). In 1840, the magazine Rural Sports described bull-baiting in the following way:
The animal is fastened to a stake driven into the ground for the purpose, and about seven or eight yards of rope left loose, so as to allow him sufficient liberty for the fight. In this situation a bulldog is slipped at him, and endeavours to seize him by the nose; if the bull be well practised at the business, he will receive the dog on the horns, throw him off, and sometimes kill him; but, on the contrary, if the bull is not very dexterous, the dog will not only seize him by the nose, but will cling to his hold till the bull stands still; and this is termed pinning the bull. What are called good game bulls are very difficult to be pinned, being constantly on their guard, and placing their noses closer to the ground, they receive their antagonist on their horne; and it is astonishing to what distance they will sometimes throw him (cited in Fairholm and Pain 1924:75-76).

Ryder argues that bull-running and baiting occurred most infamously at Stamford in Lincolnshire where ‘[b]ulls were let loose in the blocked-off streets, chased by men and dogs, beaten with cudgels and thrown off the bridge into the river before being baited’ (Ryder 1989:82). Cock-throwing involved tying a cock to a wooden peg and then throwing ‘all kinds of things’ at him until he died (De Levie 1947:21). Cockfighting assumed much the same form it does today, that is, ‘someone [would] cause the cocks to rush against each other after having armed their claws with metal spurs’ (De Levie 1947:19).

Other forms of animal entertainments also became accessible, and therefore more popular, in the nineteenth century. Travelling menageries and animal circuses became increasingly common as the roads between major cities of England improved (Harwood
1928:223). In addition, in the first half of the twentieth century zoos began to develop into a recognisable modern form and in 1828 the London Zoo opened for the first time (Berger 1980:19). It received 112,226 visitors in its first year of operation (Ritvo 1987:210). By the 1840s, zoo attendance had increased significantly as the Zoological Society of London sought to make its displays accessible to members of the working class (Ritvo 1987:215). Furthermore, as Radford notes, racing and hunting were established forms of entertainment for members of the upper class (Radford 2001:18).

Although the use of animals as the primary means of transportation, and as popular forms of entertainment, meant they had a powerful and prominent presence in urban centres, the highly visible way in which animals were transformed into food was one of the most striking differences between the nineteenth century and the current era. In the twenty-first century animals are commonly slaughtered far from the point of sale and transported to consumers as processed goods. In the nineteenth century animals were walked across England into urban centres where they were sold at wet markets and then slaughtered at one of the many local butcher shops. As late as the 1900s there remained some 20,000 privately owned slaughterhouses across England and Wales (Moss 1961:75). Historian Dorothee Brantz argues that:

[i]n late eighteenth-century European cities, most animal slaughter was carried out in small private facilities that were attached to the back of butcher shops. Livestock were readily visible in the streets, so was their blood and other debris related to slaughter (Brantz 2003:7).
Hribal notes that during the modernising period animal protein was consumed in large
quantities by the wealthy, but for the majority meat consumption was a rarity (Hribal
2003:437-438). Brantz supports that claim when she writes that in the current era:

[m]eat is everywhere, but animals and butchering are nowhere to be found. This situation
was the reverse for the average city dweller of the eighteenth and well into the nineteenth
century. For most of them, meat was inaccessible, while animal slaughter was a constant
presence in the streets (Brantz 2003:45).

It has been estimated that in 1726, 100,000 cattle, 100,000 calves, and 600,000 sheep
were driven into London and slaughtered within the city limits, most having been sold at
Smithfield Market (Radford 2001:18). Animals continued to be turned into food in this
way well into the nineteenth century. This is how Charles Dickens describes Smithfield
Market in his classic Oliver Twist (1838):

It was market-morning [at Smithfield Market]. The ground was covered, nearly ankle–
deep, with filth and mire; a thick steam, perpetually rising from the reeking bodies of the
cattle, and mingling with the fog, which seemed to rest upon the chimney-tops, hung
heavily above. All the pens in the centre of the large area, and as many temporary pens as
could be crowded into the vacant space, were filled with sheep; tied up to posts by the
gutter side were long lines of beasts and oxen, three or four deep. Countrymen, butchers,
drovers, hawkers, boys, thieves, idlers, and vagabonds of every low grade, were mingled
together in a mass; the whistling of drovers, the barking dogs, the bellowing and plunging
of the oxen, the bleating of sheep, the grunting and squeaking of pigs, the cries of
hawkers, the shouts, oaths, and quarrelling on all sides; the ringing of bells and roar of voices, that issued from every public-house; the crowding, pushing, driving, beating, whooping and yelling; the hideous and discordant dim that resounded from every corner of the market; and the unwashed, unshaven, squalid, and dirty figures constantly running to and fro, and bursting in and out of the throng; rendered it a stunning and bewildering scene, which quite confounded the senses (Dickens 1996:203).

Brantz argues that the common perception that European cities were polluted environments during the modernising period is closely associated with the way animals were transformed into food. She writes:

Since meat production involved the killing of living creatures and the dismantling of their bodies, it inevitably generated strong smells, loud noise, and lots of blood and waste. When slaughterhouses were dispersed throughout the city, livestock were herded through the streets, blood flowed in the gutters, and animal parts often polluted rivers and alley ways. Eighteenth- and nineteenth-century accounts of city life often referred to the stench and dirt of slaughterhouses when trying to describe the filth of urban living (Brantz 2003:12).

But draught, entertainment, and food animals were not the only animal uses that generated a high level of visibility. Although animal research was in its infancy in Britain in the nineteenth century, where it was practised it regularly took the form of public natural science shows, making the practice quite different to its current form. In 1824, French vivisector Madendie visited London and 'provoked a considerable outcry after
public demonstrations of his physiological experiments on rabbits, frogs, dogs and cats’ (Ryder 1989:107). A member of the audience later wrote that the ‘whole scene was revolting’ (cited in French 1975:21). Vivisection was practised most frequently in France during the seventeenth, eighteenth and nineteenth centuries (Ryder 1989:105). Until the mid-nineteenth century the practice was ‘avoided’ by British scientists. As late as 1885, only around 800 experiments were carried out on living animals in England each year (Ryder 1972:42 and Brown 1974:152). Ritvo argues that this was because British scientists ‘shared the religious and moral biases that made it distasteful’ and because their research practices had simply ‘led them in other directions’ (Ritvo 1987:158). However, as the practice of vivisection became associated with the ‘most promising research’ overseas, humanitarian concerns were pushed aside and from the 1860s onwards, vivisection was systematically encouraged and taught within the British scientific establishment (Ritvo 1987:158). By the 1870s animal experiments undertaken in Britain paralleled those of France (French 1975:35).

In Britain in the nineteenth century, companion animal ownership also took a different form. Dogs were abundant in urban centres, but they were often used as draught animals or for sporting purposes. Cats also lived in urban areas, many living freely with no discernable ‘owner.’ But companion animal ownership also became increasingly popular during the Victorian era. Ritvo argues that by the middle of the nineteenth century:

What has been called the Victorian cult of pets was firmly established. Punch frequently satirized the foolishness of dog lovers who fed their pets from the table, dressed them in
elaborate outfits, and allowed them to inconvenience human members of the household
(Ritvo 1987:86)

In response to the well-to-do’s love of companion animals, a new class of entrepreneur emerged, willing to exploit that sentiment. By the middle of the nineteenth century there were around 20,000 London street traders who dealt in live animals (Ritvo 1987:86). Furthermore, it was not uncommon for ‘professional dog stealers… [to] abscond with a cherished animal, then offer to restore it for a price’ (Ritvo 1987:86). The first public dog show was held in 1859. Dog shows endeavoured to improve various breeds, display model specimens, and discourage the breeding of mongrels (Ritvo 1987:97).

*Early Animal Welfare Benefactors and the Issue of Visibility*

The nineteenth century was a watershed in the practice of using the authority of the state to protect the interests of animals. However, as is the case with all social reform, its impetus can be traced further back. Harwood argues that:

> [b]y building up a public opinion against cruelty, reformers could make a new morality the law of the land, and the eighteenth century was busily laying the foundations for the legislative action which was to begin with the nineteenth century (Harwood 1928:262).

In 1366 cockfighting was prohibited by public proclamation as an ‘idle and unlawful pastime’ (cited in Fairholm and Pain 1924:80), although it appears little attention was paid to the ban (Fairholm and Pain 1924:80). In 1635, a law was introduced into Ireland
prohibiting the pulling of wool off sheep and the attaching of a plough to a horse’s tail (Ryder 1989:53). Between 1671 and 1831 more than fifty statutes were enacted in relation to game, deer-stealing and poaching (Radford 2001:29). The best known of these was the Black Act of 1723. It ‘made it an offence punishable by death unlawfully to hunt, wound, kill, destroy, or steel deer; to rob any warren or place where rabbits or hares were kept, maim or wound any cattle’ (cited in Radford 2001:29), and from 1785 some slaughterhouses had to be licensed (Ryder 1989:137). None of these provisions had their basis explicitly in animal welfare, but all arguably contributed to a social climate in which the practice of legislating human/animal relations, for the benefit of the animal, began to take on an air of legitimacy.

By the turn of the nineteenth century Members of Parliament had began proposing bills that were squarely focused on prohibiting some animal uses entirely, or ensuring that animals were not overused or treated particularly cruelly while undertaking certain tasks. The practices legislators targeted first were those involving the use of bulls for entertainment, or cattle and equines as beasts of burden. Sir William Putney’s 1800 Bill proposed a ban on running and baiting bulls, and the use of dogs for bull-baiting. In 1809 Lord Erskine of Restormel introduced a bill into Westminster intended to prevent ‘wanton cruelty’ to animals. It applied to maliciously wounding or cruelly beating any horse, mare, ass, ox, sheep or pig (Ryder 1989:83). Unlike Putney’s Bill, which spoke of the ‘great corruption of the Morals of the Common People’ (Great Britain 1800) generated by bull-baiting, Erskine’s bill referred to animal cruelty as being ‘highly
unjust’ and tending to ‘harden the minds of the People against the natural feelings of humanity’ (Great Britain 1809).

Martin’s first attempt at protective legislation for animals was made in 1821. That bill targeted the drovers and carters of London. It was later amended to include mares, geldings and asses. It was defeated in the upper house but was successfully passed when reintroduced a year later (Ryder 1989:86). The 1822 version was watered down as Martin felt it was necessary to do so in order to secure its passage through both houses (Fairholm and Pain 1924:28). Subsequently, judicial interpretation concluded that Martin’s Act did not apply to bulls and therefore it could not be used in opposition to bull-baiting (Fairholm and Pain 1924:70). It did, however, afford some protection to draft animals, including bovines. In 1823 Martin attempted to secure a ban on bull-baiting and dog-fighting. He was unsuccessful (Fairholm and Pain 1924:39). In 1824 Martin again sought to ban certain types of animal entertainment, including bear-baiting, cock-throwing and cockfighting (Great Britain 1824). Again he was defeated. In 1826, Martin made one more attempt at achieving a ban on bull-baiting. Yet again he was not able to secure the support needed. He left parliament that same year. Overall Martin’s primary focus had been on bull-baiting, slaughterhouse conditions, dog-fighting and welfare protection for dogs and cats (Ryder 1975:187).

In 1825 a bill was put before Westminster to amend the 1786 Slaughterhouse Act. It too was defeated. More attempts were made to amend Martin’s Act around that time. All failed. Then, in 1835, the protection of animals was again progressed by the passage of
legislation prohibiting bear-baiting, cockfighting and badger-fighting in the centre of London (Great Britain 1835). A year later Martin’s Act was supplemented in order to prohibit cockfighting and dog-fighting (Ryder 1989:99). The 1835 amendments banned the keeping or using of ‘any house, room, pit, ground or other place for running, baiting or fighting any bull, bear, badger, dog or other animal (whether domestic or wild) or for cockfighting’ (cited in Ryder 1989:88). That Act also signified the first humane controls over slaughterhouses by stating that slaughterhouse licences could be revoked on the basis of cruelty, all horses and cattle had to be killed within three days of arriving at the slaughterhouse, and all animals had to be fed and watered during the period in which they were awaiting slaughter (Ryder 1989:137-138). Cropping dogs’ ears also became illegal (Fairholm and Pain 1924:119). The 1835 Act included many other progressive animal welfare provisions. For example, it required that food and water be provided to animals who were impounded. It also outlawed most common working-class animal sports (Great Britain 1835) and introduced the principle of ‘wanton cruelty’ (Harrison 1973:789) which allowed for prosecutions in the case of animal sports (Ritvo 1987:150). When considered as a whole, the Act favoured draught animals, food animals, aged animals, and animals used for fighting and other popular forms of working-class entertainment. Indeed, as had been the case from 1800 onwards, legislators targeted high-visibility animals, especially those closely associated with urban living.

The trend towards targeting high-visibility animals persisted throughout the nineteenth century. In 1939 the use of dogs to pull draughts in London was banned. That prohibition was extended to all of Britain in 1854. In 1844 slaughterhouse laws were further
amended. In 1849 an Act for the more efficient Prevention of Cruelty to Animals was created. It applied only to animals who had been ‘sufficiently tame to serve some purpose for the use of man’ (Fairholm & Pain 1924:145-146). It made it an offence to use an unfit animal to pull a load (Great Britain 1849). In 1874 non-domesticated animals received protection for the first time.

In 1875 the first attempt was made to regulate the use of animals for scientific purposes. It failed, but that same year the Government appointed a Royal Commission to investigate the matter (Ryder 1975:196-197). The debate over vivisection escalated in England in the 1870s (Preece 2003:411), some ten years after the practice received mainstream scientific approval in Britain (Ritvo 1987:158). The Victorian Street Society, which was a specialist anti-vivisection organisation, was also founded around that time (Preece 2003:416). Those events may account for the timing of the 1875 bill. Although it failed to gain support, the 1876 Cruelty to Animals Act did include some limited protection for research animals (Finsen and Finsen 1994:32; Bekoff 1998:xvii; Ryder 1989:101). Finally, in 1900, protection for performing exotic animals was introduced via the passage of the Wild Animals in Captivity Act (Turner 1964:270; Fairholm and Pain 1924:149). That Act outlawed the abusing, infuriating and teasing of captive animals (Ryder 1989:137). Ryder describes the animal protection legislative activity that took place from the 1830s onwards in the following way:

138 Rod Preece argues that the Victorian Street Society was founded in November 1875 and the first anti-vivisection bill was presented to Westminster in 1876. My research at Westminster Archive Library suggests the first bill was presented in 1875. Richard French records the date the Bill was presented as May 4, 1875 (French 1975:69).
The Victorian era was a period of active consolidation for animal welfare in Britain, and the reign saw numerous campaigns to reduce the miseries of food animals being driven to slaughter through the streets of London and other cities, to improve the methods of slaughter, to stop the export of worn-out old horses to Belgian abattoirs, to protect performing animals in circuses and to outlaw the use of dogs for drawing carts (Ryder 1989:100).
Despite extensive animal welfare legislative activity in Britain in the nineteenth century, early animal protection statutes did not come about as a result of orchestrated lobbying activity on the part of animal advocates. Indeed, the Society for the Prevention of Cruelty to Animals was not founded in order to push for the establishment of animal welfare laws. Rather, it came about in response to the creation of the first modern animal welfare statute. Martin’s Act was enacted in 1822 and the Society held its first meeting in 1824.\textsuperscript{139} According to the Society’s prospectus, the organisation’s charter was to secure ‘the mitigation of animal suffering, and the promotion and expansion of the practice of humanity towards the inferior classes of animated beings’ (cited in Radford 2001:41). Minutes from the Society’s early meetings indicate that the organisation had a number of central aims that included the abolition of dog-pits and animal fighting, the improvement of conditions at Smithfield Markets (Harwood 1928:267) and pursuing the enforcement of Martin’s Act (Moss 1961:28). In 1830, the Association for Promoting Rational Humanity towards the Animal Creation was formed, and two years later the Animals’ Friends Society was born. Often working alongside the RSPCA, the organisations focused their efforts on the mistreatment of draught animals, cruelties at Smithfield Markets and knackeries, and working-class sports such as bull-baiting, dog-fighting and cockfighting (Li 2000). Li describes such organisations as ‘the main driving force for the prevention of cruelty to animals in the first half of the nineteenth century’ (Li 2000). Yet regardless of what animal protection organisations did after their formation, it is clear that

\textsuperscript{139} A Society for the Suppression of Wanton Cruelty to Animals was established in Liverpool in 1809, but it did not operate for long. In 1822, the Reverend Arthur Broome attempted to establish an animal protection organisation, but it also met only a few times (Ritvo 1987:128-129).
from 1800 until at least the mid-1820s animal welfare policy did not develop in response to a coordinated lobbying effort on the part of animal advocates.\textsuperscript{140}

In Chapter IV, it was noted that by the end of the eighteenth century a popular discourse had begun to develop concerning the need to provide some animals with legal protection. It appears that among the educated upper classes, certain forms of common animal suffering had begun to take on an objectionable air and in the minds of some, and the way to curtail them was to evoke the power of the state. Indeed, when writers from the period describe the highly visible nature of animals during the period, in many instances the descriptions also capture something of the animal suffering available for all to see. For example, Reverend Richard Dean lamented in 1768 that ‘[b]rutes are every day perishing under the hands of barbarity, without notice, without mercy’ (cited in Radford 2001:3). In 1797 George Nicholson relayed the story of two Manchester butchers who cut the feet of live sheep and then drove them through the city (Ryder 1989:76-77). In the same publication Nicholson wrote:

\begin{quote}
A butcher in the same town [Manchester] has been frequently seen to hang poor calves up alive, with the gambrel put through their sinews, and hooks stuck through their nostrils, the dismal bleating of the miserable animals continuing till they have slowly bled to death. Such proceedings frequently stuck the neighborhood with horror (cited in Ryder 1989:78).
\end{quote}

\textsuperscript{140} Parliamentary records indicate that some Members of Parliament received private correspondence from individuals concerned about cruelty to animals. This was especially the case with regards to bull-baiting and other forms of animal fighting; for example, see HC Deb 31 May (1809). A number of petitions opposing animal cruelty were also sent to Members of Parliament; for details, see Radford (2001).
The RSPCA’s first secretary, Lewis Gompertz, noted in 1824 that ‘any one who takes a walk in our public streets… will, if possessed of any thought, be shocked at the wanton barbarity continually practised on dumb animals’ (cited in Radford 2001:19). In 1825, a British journalist wrote that ‘England is the hell of dumb animals’ (cited in Ritvo 1987:126) and in 1842, RSPCA inspector James Grant noted that ‘[n]o person of humane mind can pass through Smithfield on a Monday or Friday morning… without the greatest violence being done to his feelings’ (cited in Harrison 1973:811 original abridgment).

Likewise, many historians who describe the lives of animals during that period also comment on the suffering widely evident. For example, the author of the history of the RSPCA, Arthur Moss, states that during the nineteenth century:

In London, as in other great cities, it was no unusual happening for a horse to be beaten to death; whilst bull-baiting, bear-baiting and cock-fighting had again become popular entertainments in towns and villages alike. Fights were arranged between dogs and cats, or dogs and monkeys, and a delighted audience roared its approval as the stronger of the two animals tore his adversary to pieces… Cattle, sheep and pigs brought to London for slaughter were killed in underground cellars, the sheep being literally thrown out of the carts, where the animals lay bruised and injured for days at a time… Calves were strung up, their mouths taped to still their cries, and were slowly bled to death (Moss 1961:13).
Ritvo argues that ‘[f]ew people registered distress at the animal suffering that surrounded them’ (Ritvo 1987:126). Yet some clearly did, and included among such people were Members of Parliament.

Hansard suggests that, at least in the early stages of Parliamentary discussion on animal welfare provisions, Members of Parliament were exposed to similar sights the commentators and scholars quoted above. For example, In 1800, Sir William Putney stated in the House of Commons ‘that several gentlemen who had been witnesses to the inconveniences which the savage customs of Bull-baiting occasioned, had come up to town for the purpose of applying to parliament to put a stop to the evil’ (HC Deb 2 April 1800).

In 1809 Lord Erskine argued, during a debate over proposed animal welfare legislation in the House of Lords, that:

> It is well observed by an Italian philosopher, ‘that no man desires to hear what he has already seen.’ Your lordships cannot have walked the streets, or travelled on the roads, without being perfectly masters of this part of the subject. You cannot but have been almost daily witnesses to most disgusting cruelties practised upon beasts of carriage and burthen, by the violence and brutality of their drivers (HC Deb 15 May 1809).

In the same year Lord Erskine also relayed to Parliament that:
I, one day, in going along Coventry Street was struck with horrors and disgust at the shocking scene of cruelty which presented itself to my observation. There was a cart, loaded with greens to a most unmerciful extent, drawn by one horse. The poor animal was in such a state that its skin alone covered its bones, and what was more shocking upon nearer observation I perceived there was no cart saddle to prevent the chain from cutting through the skin of the animal’s back, and, upon still nearer inspection, I saw the blood and matter descending its side. Besides this, the fetlock-joint was dislocated, the skin broken, and, upon every exertion of this wretched creature, the bone was visible to the eye (HC Deb 2 June 1809).

Lord Erskine went on to describe how he purchased the horse in order to ensure the animal was put out of his misery. However, he also noted that ‘this mode of relief cannot always be applied to the suffering of animals, which meet our eyes almost every day, and in almost every street of this metropolis’ (HC Deb 2 June 1809). In the early 1800s Richard Brinsley Sheridan MP advised that an animal protection bill would soon be introduced into Parliament and that it was to protect animals from cruelty generally, but ‘especially to horses, which are seen every day in our streets treated with the most vicious and unmerciful cruelty’ (cited Fairholm and Pain 1924:17). In 1849 the Earl of Minto asked the Duke of Beaufort in the House of Lords: ‘Had the noble Duke never seen a very heavy man upon a very little horse? Or persons urging their horses to the fullest speed, until they were ready to drop?’ (HC Deb 27 April 1849) All such discussions relate to high visibility animal suffering that MPs had witnessed first-hand. Furthermore, all comments were made in a way which suggests the MPs believed others had first-hand experience of the type of thing they described.
When the first-hand observations that are recorded in Hansard are considered in conjunction with the types of animals that had a high level of visibility at the time, along with the content of animal welfare bills and acts, it seems fair to conclude that a high level of visibility, especially in and around London, was advantageous to animals because it resulted in them receiving high levels of legislative attention. Furthermore, legislators in Britain in the nineteenth century targeted highly visible instances of animal cruelty, even though most high visibility was also economically productive. This suggests that, at least during the Victorian era, having a high level of visibility was more important than being non-economically productive, from the perspective of the provision of strong statutory interest protection.

One may respond to such conclusions by arguing that the uses of animals for fighting, baiting, as draught animals, and in the slaughter process were not targeted because they were simply highly visible. Rather, they were the subject of early intervention by MPs because they were animal uses that have a significant impact on the welfare of animals and, moreover, animals used in that way suffered more than animals used for other purposes. However, as is demonstrated below, although it may be correct to assume that the animals already discussed were vulnerable to cruel treatment and were therefore in need of protection, it is not correct to conclude that they were the only animals that could have benefited from state intervention.
Ponies and horses were used to haul coal in the British mining industry from the 1750s until late in the twentieth century. In the 1870s, around 200,000 equines worked below ground. The work was taxing, and many eighteenth- and nineteenth-century pit ponies never saw the light of day. However, despite the difficult work they performed, pit ponies received only limited legal protection. In 1822, Westminster granted legislative protection to above-ground beasts of burden. Pit ponies waited 89 years to receive comparable protection. That is despite their performing precisely the same function as above-ground draught equines. Indeed, during parliamentary discussions about animal welfare, reference was made to many different types of animal uses such as fox-hunting (HC Deb 1 June 1821; HC Deb 14 July 1835); ‘the boiling of lobsters, or the eating of oysters alive’ (HC Deb 10 June 1822); the ‘abominable practice of skinning cats alive which had lately been carried on to a great extent’ (HC Deb 14 July 1835); and pigeon-shooting (Harrison 1973:792). However, from 1800 until the mid-nineteenth century, Hansard is silent on the issue of pit ponies. Not only did reformers considered radical in other areas fail to refer to pit ponies during numerous discussions about animal cruelty and animal protection, but neither did their detractors – who otherwise sought every opportunity to mock calls for animal welfare protection. Furthermore, the first time the RSPCA made representation to the government on behalf of pit ponies was in 1876 (Moss 1961:95). That was 52 years after the organisation began working on behalf of above-ground draught animals. This trend suggests that the invisible nature of the work pit ponies performed is a key factor that explains why their welfare was not considered at the same time as early reformers sought to progress the wellbeing of above-ground animals.
Pit ponies played a key role in the British mining industry from the mid-eighteenth century until the early twentieth century. Pit ponies lived and worked underground in coal mines alongside hewers, colliers and pony boys. Once coal was extracted from the earth it was loaded into tubs that were mounted on metal rails. Pit ponies wore harnesses, and once a load was ready to be hauled, the pony’s harness was attached to the tub or drum and the pony was led away from the coalface. In the early stages of coalmining, shafts were small and the animal would literally walk the coal out. As mining techniques became more sophisticated and mines expanded, pit ponies often worked deep underground where their task was to propel the coal to a point from which it was mechanically transported above ground (Williams 2005a). The 1911 Coal Mines Act stipulated that no equine was to work below ground before reaching four years of age. During the nineteenth century it is likely animals entered mines as soon as they were capable of working. Eric Squires worked with pit ponies in the British mining industry in the twentieth century. This is how he describes a pony’s initial descent into the mine:

He was walked on the cage and the gates closed after him, leaving him alone to his experience. There was a good reason why no one ever rode on the same deck with a pony; although he was tied off, of course. The fact that he was restricted when the cage began its rapid descent, in my opinion, contributed much to the pony’s fears.

The cage descends the shaft with stomach-lifting swiftness. First comes the slam of the safety gates, then the rush of compressed air noisily releasing the safety catches which
automatically protrude under the bottom of the cage when it reaches the top. After that inch or so lift which allows the catches to be retracted, the cage moves slowly downwards until the landings have been cleared; then it literally drops. The speed varies from pit to pit but, as a general rule, it is said to be more than 30mph (Squires 1974:78-79).

Once below ground, many ponies of the early nineteenth century would never leave the pit again. Records indicate that during protracted strike action, and during the colliers’ extended leave, some mine operators brought their horses and ponies above ground. However, that practice was contentious as the process of transporting the animals out of the mines was traumatic and, once above ground, some equines experienced temporary blindness due to the sudden bright conditions. Violent behaviour among the animals was also a problem. Furthermore, the animals were often reluctant to return to the mine shaft (Williams 2005b).

I am not aware of surviving records that indicate the hours worked by pit ponies during the nineteenth century. However, extensive records on human labour trends are available and indicate that, prior to 1842, boys frequently worked in excess of twelve hours and throughout the late nineteenth century twelve-hour days were common (Church 1986:248-249). As boys operated ponies and horses, it is therefore likely the animals also worked twelve or more hours in a shift, but how many shifts a week was normal is unclear. As the human miner’s level of remuneration was reliant on the ability of the collier to extract coal and the ponies to haul it out, accounts from the period suggest that non-cooperative, slow or injured animals were at times victims of violent retribution.
Captain Fairholm, former chief secretary of the UK RSPCA and co-author of the history of the RSPCA’s first 100 years, argued in 1924 that:

> From a mass of cumulative evidence no doubt could exist that horses were frequently ill-treated in the most brutal manner by the pit-lads into whose charge they were given. It cited instances of unsanitary stables; proved beyond question that horses were kept for undue periods of time below ground without returning to the surface; established the fact that blind ponies were employed in many mines, and that in numerous cases unfortunate animals, in order to secure a large output, were forced to work in double shifts (Fairholm and Pain 1924:151).

As ponies were also an input cost in the coal production process, they were unlikely to receive extensive treatment when sick or injured. Squires recounts that ‘[Pit ponies] were a cheap form of labour and casualties among them were high. My father can remember a time when the turnover was five or six ponies per week – at one pit!’ (Squires 1974:79)

The number of ponies used in the mining industry was 200,000 in 1876 (Moss 1961:95), 70,000 in the early twentieth century (Griffin 1977:111), and when British mines were nationalised in 1947, 21,000 ponies still worked in the industry (Williams 2005a).

*Martin’s Act* of 1822 made no reference to pit ponies. In the 87 years from 1800 until 1887, numerous pieces of animal protection legislation and amendments to existing legislation passed through Westminster, as did many other bills that were eventually defeated. Yet none of that legislative activity considered what protection may be
appropriate for pit ponies. Then, in 1887, the *Coalminer’s Regulation Act* was created. That Act was not intended as a piece of animal welfare legislation but it did include a small number of provisions pertaining to horses and ponies. Section 41(iii) provided for state-appointed inspectors to ‘examine into and make inquiry respecting the state and condition of any mine… or the care and treatment of the horses and other animals used in the mine’ and Rule 17 of Section 49 stated that ‘[e]very travelling road on which a horse or other draught animal is used underground shall be of sufficient dimensions to allow the horse or other animal to pass without rubbing against the roof or timbering’ (Great Britain 1887). However, those protections were not comparable to the statutory protection already well-established for above-ground draught animals in 1887.

Furthermore, moves by the RSPCA in 1886 to have their inspectors legally permitted to enter mines for the purposes of inspecting the welfare of pit ponies were defeated (Harrison 1973:792). No further steps were taken to either investigate the conditions under which ponies laboured in coalmine pits or to reform their working conditions for a further 24 years.

Then, in 1911, a Royal Commission on Mines was appointed. It included in its terms of reference the working conditions and possible abuse of pit ponies. After receiving extensive testimony, the Royal Commission found that:

Pit ponies were employed in the majority of Great Britain’s coalmines. There were rules governing their treatment, but whether or not they had been observed had been questioned. No widespread cruelty to the ponies had been proved; on the contrary the majority were well treated. But ill-treatment did occur and the recommendations of the
Commission governing their care, prevention of overwork, sufficiency of food and water, tests for glanders,\(^{141}\) etc., should be embodied in an Act. It was not practicable to prohibit the use of ponies altogether. The Inspector of Mines should be responsible for the observation of the rules (Great Britain 1911a).

Although widespread cruelty had not been proved, the 1911 *Coal Mines Act* did incorporate seventeen provisions explicitly aimed at safeguarding the welfare of pit ponies. Beyond the requirement that ponies not enter the mines before the age of four, the Act also provided for ‘properly constructed stables’ which housed the animals away from main roads, and which were properly ventilated and maintained in a sanitary manner. The schedule also provided for proper food, clean water, and medical assistance. Furthermore, the Act stipulated that horses were not to be worked when unfit, blind, or injured (Great Britain 1911b).

Such provisions were a great step forward in the protection of pit ponies. Yet even so, Radford describes the level of legislative protection extended to pit ponies in 1911 as ‘inadequate’ (Radford 2001:49). Within that context it is important also to note that the Act did not provide for RSPCA inspectors to enter mines in order to assess the welfare of equines, a provision actively lobbied for at the time (Fairholm and Pain 1924:152). Nor did it require the animals be provided with regular periods of time above ground. In addition, the Act did not limit the hours a horse could work in a single shift. Speaking in the House of Commons in 1911, Mr Churchill MP stated:

---

\(^{141}\) Glanders is a bacterial disease that affects equines. It causes lesions to develop on the lungs and other organs.
The Royal Commission on Mines, in their third Report, recommend that it should be
enacted that pit ponies shall not be over-worked and shall have adequate periods of rest,
but do not think it practicable to lay down any general rule prescribing the length of the
shift (HC Deb 19 April 1911).

The 89 year gap between above-ground draught animals being afforded statutory
protection from harm, and below-ground horses and ponies receiving comparable
protection, is significant. The reason it is significant is that above-ground draught animals
and pit ponies carried out precisely the same function. The only discernible difference
between the work undertaken by the two groups was where the task was performed.

Coal was undoubtedly a key British commodity in the nineteenth century; by 1830 it was
already one of Britain’s major industries. In 1841, coalmining was the sixth largest
industrial employer of men (Church 1986:188) and by 1907 coalmining accounted for
approximately five per cent of the United Kingdom’s national income as well as
providing employment to eight per cent of all male workers (Church 1986:2–4). Yet
coal’s value was not realised simply by extracting it from the ground. Throughout the
nineteenth century horse power was used not only to haul coal underground. It was also
the primary means by which coal was transported to rail lines, from rail lines to markets,
from markets to ports, and to homes for use by domestic consumers. The coal industry’s
reliance on horse power at every stage of extraction and distribution suggests that
concern for the British energy industry was unlikely to be the reason early nineteenth-
century legislators protected above-ground beasts of burden from harm, and not pit
ponies. Indeed, not only did the coal industry rely on horse power both below and above
ground, animal welfare legislation did not in fact seek to prohibit the use of animals. Rather, as is the case in the early twenty-first century, animal welfare laws in the nineteenth century were designed to allow humans to use animals as part of the economic process while protecting animals against the worst excesses of cruelty. Therefore, animal welfare legislation was not an inherent threat to energy production. This means that concern for Britain’s energy resources is unlikely to be an adequate explanation for why pit ponies received protection some 89 years later than London’s carthorses. Yet nineteenth-century legislators did not have to defend their record on animal welfare legislation against claims of unfair bias towards energy producers, because from 1800 until the middle of the nineteenth century pit ponies were simply excluded from the debate over animal welfare. Pit ponies’ low level of visibility is the most logical explanation to account for that inconsistency.

Ryder supports the notion that there was a link between visibility and statutory interest protection for animals in Britain in the nineteenth century when he writes:

To a certain extent cruelty to animals had become, by the end of the eighteenth century, a mark of distinction between the refined and the vulgar, between the uneducated and the cultivated. Many of the latter felt it was time to curb cruelty to horses and farm animals in the street, and their witnessing of bloodsports which prompted this move (Ryder 1989:79).

Others agree. For example, the RSPCA’s Captain Fairholm made a link between the clandestine nature of the work performed by pit ponies, and cruelty against them, when
he argued that the only way to protect them from harm was to undertake spot mine
inspections. In 1924 he wrote:

\begin{quote}Immured in underground workings hundreds of feet from the light of day, without any adequate system of inspections, these animals may be particularly subject to cruelty at the caprice of brutal or callous persons.\end{quote}

The means of detecting offences were – and still are – extremely difficult, for any attempt to obtain access to the mines was met by the objection that such were private property (Fairholm and Pain 1924:151).

The author of the 1964 publication \textit{All Heaven in a Rage} also appears to agree with the role of low visibility in disadvantaging pit ponies in relation to the provision of legal protection. He wrote:

\begin{quote}Decrepit horses sent for slaughter had this advantage: the sufferings were visible to the onlooker. Out of sight, in the coalmines, totally cut off from their natural environment, laboured an army of horses and ponies some 100,000 strong whose miseries were as difficult to assess as they were easy to exaggerate (Turner 1964:259).\end{quote}

All the authors cited above share the view that labouring below ground, under conditions of low visibility, disadvantaged pit ponies. That disadvantage may be explained by the fact that pit ponies’ place of work meant they were not visible to Members of the
Parliament or citizens without a pecuniary interest in the animals. At the same time, animal advocates were also blind to their plight and did not seek to advocate on their behalf until long after they had taken up the cause of above-ground urban animals.

Conclusions

An analysis of trends in nineteenth-century British animal protection legislation suggests that visibility was an influential factor informing the flow of bias in animal protection arrangements. In Chapter VIII, it was demonstrated that Exhibited, Sports and Gaming Animals are afforded preferential treatment by legislators, although there are a number of significant exceptions, the most obvious being limited statutory protection for racehorses. It is, however, also clear that dogs are shown considerable favouritism. The way regulations themselves accounted for that bias suggests dogs are treated favourably because many humans have a close relationship with a dog. This is indicative of a type of visibility bias, although the public are not necessarily able to see all the ways dogs are utilised in the economic process. In the case of dogs, it appears that the fact that any dog has a high level of visibility is sufficient basis upon which to provide that species of animal with favourable levels of protection. There was also considerable bias in favour of Companion Animals, although it was not clear whether that is a result of their status as non-economically productive animals, or whether it results from their high level of direct popular visibility.
Yet, in the case of Britain in the nineteenth century, there seems to be less ambiguity. The evidence suggests that legislators targeted high-visibility animal uses, despite the high-visibility animals of that period being economically productive. That is not to suggest that there were not a number of significant exemptions. For example, Dix Harwood relays stories of considerable cruelty perpetrated against racehorses (Harwood 1928:263), yet, as is the case presently, they were not early animal welfare beneficiaries, even though they had high levels of visibility. Even so, as a general principle, it appears early animal welfare reformers sought to protect animals against cruelties they, and others, were most readily able to see.

The research conclusions in this section may be disputed on the basis that the animal uses targeted in the nineteenth century were predominantly working-class pursuits, and the rapid urbanisation undertaken in the United Kingdom during the period had the effect of enhancing the visibility of working-class animal uses. Although it seems likely that class bias was at play – for example, fox-hunting was not targeted while bull-baiting was – it is not adequate to conclude that class prejudice fully accounts for animal welfare inconsistencies. Draught animals were the subject of the first animal protection statute. The use of draught animals was integral to the lives of all people living in Britain at the time. It was the primary means of human transportation and was essential for commerce. Protecting draught animals from harm affected all members of society. Furthermore, a purely class-based analysis of animal protection inconsistencies does not properly account for the extent to which legislators neglected the interests of pit ponies. Although coal was important to all sections of society, any cruelty pit ponies experienced was
certainly perpetrated against them by members of the working class. If legislators were seeking to protect animals from harm exclusively in order to raise the moral standard of the working class, targeting the treatment of pit ponies would have provided an ideal opportunity to do so. That did not occur. Given that, a visibility interpretation in trends in nineteenth-century animal protection arrangements goes a long way to help account for why some animals were protected from harm, while others were not.
Part IV: Towards an Equitable Model of Animal Protection

Chapter X: Applying Equality to the Internal Inconsistency

Introduction

This section builds on the argument put forward in Chapter III. In that chapter it was asserted that the three most influential theories of animal protection – Singer’s use of utilitarianism, Regan’s use of deontology, and Rowlands’ use of contractarianism – are all built on liberal principles. Despite the different pathways used, all three approaches seek to deploy liberalism’s own tools in defence of animals by demonstrating that the mechanisms inherent in utilitarianism, deontology, and contractarianism that work to protect the interests of humans are equally applicable to (some) nonhuman animals. Indeed, all three theories assert that the common practice of excluding animals from those philosophical frameworks is a form of arbitrary discrimination.

Singer, Regan, and Rowlands are united in their desire to advocate for an enhanced moral status for nonhuman animals. All three also agree that the best way to achieve that end is to draw (some) animals into the human moral circle. This is done by mounting a case in favour of animals with a close evolutionary proximity to the human species being allocated interest protection on a comparable basis to humans. That case is based on a
capacity, or set of capacities, the animal is said to share with humans. A similar approach has also been adopted by many pro-animal legal theorists and some political studies scholars. That approach is referred to in this study as a form of animal protection theorising intended to challenge the persistence of the external inconsistency, which is an inconsistency in the way the interests of animals are protected in relation to the interests of humans.

In Chapter III it was further argued that despite the intellectual vigour with which pro-animal philosophers and legal theorists have argued in opposition to the persistence of the external inconsistency, those arguments have not been embraced by the mainstream. This is despite other forms of arbitrary discrimination, such as sexism and racism, having been seriously challenged over the last 200 years. The dominant view continues to assert that there is something special about the human species which differentiates humans from, and places humans above, all other life. That view persists despite an inability on the part of those in favour of the status quo to explain what it is about species membership that makes it a morally relevant characteristic (Nozick 1997:307-308). It is most people’s unwillingness to allow any animal to be counted among the human group, for the purpose of deciding what protections should be extended to the individual, that has given rise to the animal protection model outlined in this chapter.

In addition to the external inconsistency, animals are also subject to another type of inconsistency. That inconsistency was described in Chapter V and is referred to as the internal inconsistency, that is, an inconsistency in the way current animal protection
arrangements function in and of themselves, without reference to human protection mechanisms. It has been argued that the existence of the internal inconsistency is accepted by scholars in the field of animal protection as a significant impairment to some animals receiving adequate levels of statutory protection. Traditionally the internal inconsistency has been viewed as the result of overtly economic drivers. Such a view asserts that the state is less likely to intervene on behalf of an animal when humans have a strong economic interest in causing the animal to suffer. In the year 2000, American scholar and animal law specialist David Favre argued that ‘[m]oral disregard remains the dominant attitude displayed towards animals which contribute to human economic well-being’ (Favre 2000). This study does not seek to challenge that assertion. However, as Part III of this dissertation has shown, an animal’s level of visibility is also a factor that influences the extent to which the state is likely to protect an animal from harm. Specifically, there seems to be a trend towards high-visibility animals receiving a greater volume of – and more effective – legal protection than is extended to low-visibility animals. The evidence further suggests that this is the case even when the animal use is economically productive in nature.

This chapter is underscored by the belief that there is something problematic about current animal protection arrangements, and, as such, animal use regulation is in need of reform. On that basis a new animal protection model is proposed here. It is designed to alleviate the problem of the internal inconsistency, while allowing the external inconsistency to remain intact. It does this by calling on the state to be consistent in the way it regulates captive animal welfare. However, the consistency referred to here is not
the same consistency pro-animal theorists have traditionally sought to engage. They have argued for consistency in the way animals are protected in relation to humans. By contrast, what is proposed in this chapter is a new approach to animal protection where by the state applies consistency to captive animal statutory protection, irrespective of an animal’s industrial use. It is equality for captive animals, in relation to other captive animals, irrespective of the protections available to humans. Such an approach is advocated for two reasons. First, by allowing the external inconsistency to persist unchallenged, it is foreshadowed that the proposed model will be more acceptable to the mainstream because of the high level of resistance most people express to the proposition that the interests of animals should be assessed according to the same measure applied to humans. Second, at present some captive animals receive considerably less interest protection than other captive animals, even when the animals are of the same species. This occurs for a number of reasons, one of which is that some animals are not in a position to have the fairness of their treatment assessed by impartial witnesses. By applying the principle of equitable treatment to animal protection arrangements, the problem of some animals being afforded less protection than others as a result of their low visibility would be alleviated because a single standard would be applied to both high- and low-visibility animals.
This chapter builds on the argument put forward in Chapter IV, where it was asserted that the common liberal notion that all animals are natural entities, and are therefore beyond the scope of political institutions, is a flawed framework. In that chapter it was argued that such a world view creates an artificial divide between human society and all other life, and in doing so makes it difficult for political theorists to appropriately conceptualise the human/animal relationship. Instead, it was suggested that it is more appropriate to view some animals as having been explicitly drawn into the human-constructed political system. Such animals are referred to in this study as captive animals. Captive animals are animals that are restrained by humans by means of a cage, tethers, or domestication. Furthermore, they are animals that are explicitly the subject of legislation to the extent that the state stipulates both the positive and negative duties humans have towards them, and enforces those provisions using the state’s monopoly over the use of coercive force. Such animals are not natural beings living according to their own will. They are highly manipulated individuals whose welfare rises and falls according to political decisions. To borrow the language of some political philosophers, such animals have been ‘contracted in’ to political society, albeit without their consent or knowledge. Such animals, it has been argued, should be viewed as political entities.

If it is accepted that some animals have been politicised to the extent that they may be considered part of the political landscape, it seems appropriate to conclude that the principles which guide liberal democratic states in relation to other areas of political
activity should also be applied to the way the state regulates the lives of animals. Such an approach seems particularly appropriate in the absence of an explanation to account for why captive animals constitute a special case. Traditionally, liberal theorists have denied that the types of liberal democratic principles used to protect humans from harm can be applied to animals, because the doctrine of moral pluralism dictates that the way humans treat animals is a matter to be decided by the individual’s conscience and not a matter to be regulated by the state. Yet in Chapter IV, it was demonstrated that the practice of applying moral pluralism to the treatment of animals is dependent on the flawed assumption that all animals live as part of the natural world. Furthermore, in that section it was shown that not only is the view that all animal life is natural, and therefore apolitical, theoretically flawed, it is actually counterfactual, because in the case of captive animals the state regulates the way humans may and may not treat them – from the moment they are born until they die.

This chapter therefore assumes acceptance of the three premises that have already been argued for in the preceding chapters. Those premises are: 1) the lives of some animals are manipulated by human agents, acting in accordance with the rule of law, to such an extent that those animals should rightly be viewed as political entities and not a natural phenomenon; 2) the laws regulating animal welfare are not consistent, because they afford some animals better protection, under certain circumstances, than others; and 3) an animal’s level of visibility is one of the factors informing which animals are well-protected by the state and which animals are not. Given those principles, attention is turned here to reasons why an inconsistent approach to animal protection may be
problematic from the perspective of liberal democratic political principles, specifically in relation to the concepts of equitable treatment and transparency.

The notion of equal consideration lies at the base of liberal democratic political thought (Rowlands 1998:13). Political scientist Alan Ryan argues that it is impossible to speak of ‘liberalism,’ but rather one must speak of ‘liberalisms.’ However, Ryan also acknowledges that there are a number of key defining beliefs which allow theorists to distinguish liberalism from other schools of thought (Ryan 2000:291-297). One of these, for example, is the idea that individuals enter this world on an equal basis with the same rights as their contemporaries, and with the same freedom to make their way in life according to the best of their ability (Ryan 2000:296; Rowlands 1998:13). The principle of equitable treatment permeates liberal democratic societies. The idea of ‘one vote, one value’ signifies that all citizens should be permitted to participate in elections on an equal basis. Formal voting equality is commonly seen as essential to democratic rule (Gutmann 2000:413). Furthermore, the notion of equality before the law is intended to facilitate equitable application of agreed-upon formal rules, and the concept of universal human rights is thought to apply to all humans regardless of their race, religion, sex, or sexuality. That doctrine also attests to the primacy of equality in liberal democratic political arrangements because human rights are thought to apply equally to all, and not exclusively to some.

For those who advocate a strong role for the state, the principle of equal consideration may entail the provision of positive services and intervention for all on a comparable
basis. If one assumes a minimal role for government, the liberal principle of equitable
treatment may require that negative liberty be extended to all on an equitable basis.
However, the notion that the state may actively discriminate against some individuals is
not a recognisable element of liberal thought. Indeed, the most influential liberal theorist
of the twentieth century, John Rawls, takes the objection to active discrimination by the
state a step further and argues that where inequality does exist between individuals, it
should be to the advantage of the least well-off (Rawls 1971:60-61).

Therefore, given the emphasis placed on equitable treatment by advocates of liberal
democratic political arrangements, the practice of protecting a dog used in research from
harm more strongly than a rabbit used for the same purpose; or affording a hen greater
legislative protection when the hen is used for the purpose of filming a television
advertisement, and diminished protection when she is engaged in the production of eggs,
would appear to be problematic. If the three premises outlined above are thought to hold
true, the explicitly discriminatory approach to animal welfare protection, which is normal
practice in all advanced liberal democratic states, must be viewed as inappropriate.
Furthermore, when the discriminatory nature of animal welfare legislation is tied to an
animal’s level of visibility, it becomes even more difficult to defend. The idea that the
state may legally protect most children against physical abuse, but permit certain children
to be abused on the proviso that few people are aware the abuse is occurring, does not sit
comfortably with any account of liberal democratic political principles.
In Chapter V, the discussion of the legal concept of necessary suffering concluded with an analysis by Mike Radford concerning the beneficial nature of that principle as it pertains to animal welfare legislation. Specifically, Radford argues that the notion of necessary suffering has redeeming qualities in that it can be applied to a range of situations and ‘it can be constantly reinterpreted by the courts in the light of greater understanding about animal suffering, and changing social attitudes regarding the proper treatment of animals’ (Radford 2001:258). However, the absence of economically productive animals from most people’s everyday experience makes it unclear how society can formulate an attitude towards animal suffering. Certainly it can not do so based on personal experience.

Integral to the notion of democracy is the idea that ‘the people’ are involved in making decisions informing the type of society they live in. Political scientist Amy Gutmann argues that ‘[a]ll types of democracy presume that people who live together in a society need a process for arriving at binding decisions that takes everybody’s interests into account’ (Gutmann 2000:411). Yet, in the case of animal treatment it is almost impossible to take animals’ interests, or the interest a human has in not harming animals, into account because few people are in a position to arrive at a conclusion regarding how well the interests of animals are being met. Steven Lukes asks:

[I]s it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either
because they can see or imagine no alternative, or because they value it as divinely ordained and beneficial? (Lukes 1974:24)

In *Power: A Radical View* (1974) Lukes identifies non-decision making as a key element of radical power (Lukes 1974:37). If Lukes is correct in that assessment, then the low visibility status of some animals means those who extract profit from those animals wield considerable power. If that power is used at the expense of democratic decision making, it may be argued to be problematic.

Cass R. Sunstein argues that the question of what protection animals should be entitled to before the law is ‘controversial’ (Sunstein 2004:8). He claims that there may be a number of causes for that controversy, but that:

> [p]artly the controversy may arise because of sheer ignorance, on the part of most people, about what exactly happens to animals in, for example, farming and scientific experimentation; probably greater regulation would be actively sought if current practices were widely known (Sunstein 2004:8).

If it is true that the reason Agricultural Animals and Research and Education Animals receive weak legislative protection stems, at least in part, from their low level of visibility, there appears to be a problem in the way animal use is regulated from the perspective of transparency within a democratic political structure. Not only is the equity principle not applied to the state’s management of nonhuman animals, but the role of citizens in setting animal care standards is seriously compromised. Furthermore, current
animal use patterns result in economically productive animals having the lowest level of visibility. That means that some animals are vulnerable to cruel treatment in pursuit of financial gain; in addition, it also means that their wellbeing is further compromised because citizens without a direct pecuniary interest in their use are not in a position to reach their own conclusion as to whether the state should intercede on each animal’s behalf or not. Such an arrangement would be likely to draw criticism in other areas of public policy. It is not clear that it should be tolerated in the management of the human/animal relationship.

*Equality for Animals and Animals Only*

An appropriate solution to the problem of some animals’ low visibility status resulting in citizens being excluded from the process of making decisions concerning their welfare could not include an attempt to turn back time and require that animals be herded into cities, sold at wet markets, and slaughtered in alleyways outside butcher stores, so passers-by may bear witness to the process. Such a strategy is impossible to achieve and entirely undesirable. However, by tying animal welfare protection levels for low-visibility animals to the standards afforded high-visibility animals, it is possible to effectively alleviate both the problems of inequality, in and of itself, and inequity resulting from low visibility. As long as some captive animals are visible to citizens, their level of interest protection may be used as the benchmark to establish what the community considers to be a reasonable level of animal care.
The animal protection model proposed here is one that would require the same standard of treatment be applied to all captive animals consistently. In general terms, it would mean that the common practice of establishing a set of guiding principles for animal protection and then compromising those principles in order to facilitate the animal industrial complex would be unjust. A set of standards would need to be established and then adhered to across the entire captive animal spectrum. It would mean that the state would be acting illegitimately if it required an animal exhibitor to provide an animal with $x$ amount of space, while a farmer was required to provide the same species of animal with $y$ amount of space. It would mean that egg-laying birds would only be permitted to be housed three to a cage if members of the public were willing to see birds housed that way in pet shops. It would mean that a research scientist interested in understanding more about how a skull shatters when it comes into contact with a blunt object at speed would only be able to bludgeon dogs to death in the laboratory if members of the public were prepared to allow Companion Animal dogs to be bludgeoned to death in public places. It would also mean an end to the standard practice of prohibiting cruelty as a general principle and then allowing cruelty to animals to take place if a rationale can be provided to justify the act – that is, so long as the suffering can be shown to be necessary. It would mean that by popular agreement a decision would have to be made about what is morally acceptable. If the consensus view is that it is unacceptable to bludgeon some dogs to death, then an equity-based approach to justice between animals would mean that it would be unacceptable to bludgeon any dog to death.
Specifically, in relation to the animal protection regulatory regime currently in place in NSW, it would mean that animals used for research and education purposes would have to be brought into line with other animal uses, and that the seven protections outlined in Chapter VIII that are available to all other animals would have to be applied to them. Alternatively, if there were opposition to extending those seven protections to Research and Education Animals, the equality principle would require that no animal receive them. Other protections could be introduced, and some of those seven could be removed. What protections animals deserve would be decided according to normal political processes. But the central point is that whatever protection is made available to animals must be fundamental in the sense that they cannot be compromised, overturned, or deemed not to apply to certain animals. This model allows for the possibility of positive discrimination, or additional protection for animals most in need. But it does not allow for the removal of protection from some animals.

The Risk of Animal Equality

In Chapter VII a quote by Michael Pollan was used to support the claim that Agricultural Animals have a low level of visibility. In the same essay Pollen argued that:

"the industrialization – and dehumanization – of American animal farming is a relatively new, evitable and local phenomenon: no other country raises and slaughters its food animals quite as intensively or as brutally as we do. Were the walls of our meat industry to become transparent, literally or even figuratively, we would not long continue to do it"
this way. Tail-docking and sow crates and beak-clipping would disappear overnight, and
the days of slaughtering four hundred head of cattle an hour come to an end. For who
could stand the sight? (Pollen 2003)

Likewise, Peter R. Cheeke also addresses the issue of Agricultural Animals and low
visibility and asserts that:

In my opinion, if most urban meat eaters were to visit an industrial broiler house to see
how the birds are raised and could see the birds being ‘harvested’ and then being
‘processed’ in a poultry processing plant, they would not be impressed, and some,
perhaps many, of them would swear off eating chicken and perhaps all meat. For modern
animal agriculture, the less the consumer knows about what’s happening before the meat
hits the plate, the better (Cheeke 2004:332).

Yet despite such statements, the proposition that direct, repeated, first-hand exposure to
modern animal agricultural techniques would result in a significant proportion of the
population opposing what they saw has not been tested. Those sympathetic towards
animals may hope that such assertions are true. Furthermore, the legislative analysis
undertaken in Chapters VIII and IX suggests high visibility is legislatively beneficial to
animals. However, due to the low visibility status of many animals, it is impossible to
know for certain how a community would react to increased animal visibility.
Even if the community does express some sympathy towards animals when they are able to witness their suffering, it is not clear what the outcome would be if the public had to choose between the benefits generated by causing animals to suffer, and protecting animals from harm. If the choice is between cheap meat or animal-based toxicology tests, and strong animal welfare protection for all animals, including Companion Animals and Exhibited, Sports and Gaming Animals, the public may choose in favour of the former and not the latter. Such a decision would have a negative impact on the interest protection available to high-visibility animals, as their level of protection would have to be lowered in order to bring them in line with the least protected.

An anonymous two-page survey was undertaken as part of this research project. The survey asked questions about attitudes towards the use of animals in research and education, and was distributed to people with some level of exposure, knowledge, or interest in the practice. The four groups surveyed were: animal researchers, animal research support staff, members of a new welfare animal protection organisation, and members of an animal rights organisation. Animal researchers and animal research support staff would not qualify as contributors to Research and Education Animals’ level of visibility, according to the conditions stipulated in Chapter VIII, due to their pecuniary interest in the scientific use of animals. However, because of the low visibility status of Research and Education Animals, direct visibility is limited also exclusively to those with a pecuniary interest in the animals. Therefore there was no alternative but to sample those engaged in the animal research sector. The survey questions are available as Appendix VI.
and the full statistical results are provided in Appendix VII. The statistical results discussed in this section are available below as Tables VI, VII, VIII, IX and X.

When asked how their knowledge of the use of animals in research was acquired, 77.3 per cent of the animal research group and 82.6 per cent of the animal research support services staff identified personal use. That was the highest percentage for both groups. A small number of those drawn from the new welfare and the animal rights groups also reported having first-hand exposure to the use of animals in research – 17.2 per cent and 15.4 per cent respectively. That suggests that some animal protection organisation respondents are, or were, engaged in the use of animals in research and education. However, in the case of the animal groups, the most common response was that they received their information through animal protection organisations. 93.4 per cent of the new welfare respondents and 97.6 per cent of the animal rights group responded in that way. Although there are no pecuniary issues in the case of those who received their information through an animal protection organisation, it is likely the information they receive focuses on the worst elements of animal research and education and possibly does not provide a balanced account of the practice.

When asked how concerned they were about the use of animals in research, as anticipated, the new welfare and animal rights respondents expressed high levels of concern, with 93.8 and 93.3 per cent respectively stating they are ‘very concerned.’ Yet those who use animals in research also expressed concern. 31.8 per cent of the animal research group stated that they are ‘very concerned’ about the use of animals in research.
and 60.2 per cent said they are ‘somewhat concerned.’ Furthermore, of the support services staff, 47.8 per cent reported being ‘very concerned’ and 39.1 per cent said they are ‘somewhat concerned.’ This suggests that individuals whose professional lives are dependent on the use of animals in research and education also feel a considerable level of concern about that form of animal use. However, the concept of ‘concern’ may be interpreted in different ways, and interviews with the respondents would need to be undertaken in order to understand what they mean precisely by that use of language. For example, for some respondents the concept of being concerned for the wellbeing of an animal may be implicit in all forms of animal use. But that concern may not necessarily translate into a belief that the animals should not be used in any particular way or that animal welfare laws should be strengthened. In the case of the two animal groups respondents, however, it is likely they associate ‘concern’ with ‘opposition.’

What is meant by the concept of ‘concern’ is illuminated somewhat by responses to the question which asks ‘Has your concern resulted in you changing your behaviour?’ The results from the animal protection organisation respondents were as predicted, with the most popular responses for the new welfare organisation being: they choose to buy ‘cruelty-free’ products (90.6 per cent), they have joined an animal protection organisation (85.9 per cent), and they tell their friends and family about the use of animals in research and education (73.8 per cent). The most popular responses from the animal rights group were the same three options, in the same order. In the case of the animal rights group the percentages were: 92.8 per cent, 90.4 per cent and 81.7 per cent.
Of greater interest were responses from the animal researchers and animal support staff. In the case of animal researchers, 45.5 per cent reported that their concern about the use of animals in research resulted in them telling their friends and family about animal research practices. The next most popular response from that group, in relation to opposition to the use of animals in research, was that 25 per cent choose cruelty-free products. That effectively translates into a boycott of the animal research sector, however, it is a boycott limited to non-essential luxury products. The most popular response from the animal research group was that they support the use of animals in research and education because suffering is minimised (61.4 per cent) and animal research is justified by the benefits it brings (56.8 per cent). 19.3 per cent of the research group reported altering the way they use animals in research as a result of their concerns, but only 1.1 per cent reported ceasing using animals.

Of the animal research support services staff, 47.8 per cent said their concern has led them to tell friends and families about the use of animals in research. The same proportion of respondents stated that they had joined an animal ethics committee as a result of their concern. However, as with animal researchers, a larger proportion were in favour of animal research. 73.9 per cent said that there are no alternatives available, while three responses all received 69.9 per cent support. They were: the use of animals in that way is justified by the benefits it brings, modern medicine would not be where it is today without the use of animals in research and animal research is well-regulated. The results are presented below in table form.
Table VI: How knowledge about the use of animals in research was acquired

<table>
<thead>
<tr>
<th></th>
<th>Personal experience</th>
<th>Popular media</th>
<th>Books or academic journals</th>
<th>Animal welfare/rights organisations</th>
<th>Patient or research advocacy groups</th>
<th>I know nothing about this issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>77.3</td>
<td>47.7</td>
<td>52.3</td>
<td>20.5</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>82.6</td>
<td>13</td>
<td>60.9</td>
<td>43.5</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>17.2</td>
<td>71.1</td>
<td>40.6</td>
<td>93.4</td>
<td>10.5</td>
<td>0.8</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>15.4</td>
<td>62.0</td>
<td>46.2</td>
<td>97.6</td>
<td>11.5</td>
<td>0</td>
</tr>
</tbody>
</table>

Table VII: Level of concern about the use of animals in research

<table>
<thead>
<tr>
<th></th>
<th>I am very concerned</th>
<th>I am somewhat concerned</th>
<th>I am not concerned</th>
<th>I know nothing about the issue</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>31.8</td>
<td>60.2</td>
<td>3.4</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>47.8</td>
<td>39.1</td>
<td>8.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>93.8</td>
<td>4.7</td>
<td>0</td>
<td>0.4</td>
<td>1.2</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>93.3</td>
<td>4.3</td>
<td>1</td>
<td>0</td>
<td>1.4</td>
</tr>
</tbody>
</table>
Table VIII: How has your behaviour changed?

<table>
<thead>
<tr>
<th></th>
<th>Tell friends and family</th>
<th>Choose ‘cruelty free’ products</th>
<th>Join an animal rights/welfare organisation</th>
<th>Written to a politician</th>
<th>Protested</th>
<th>Joined an AEC</th>
<th>Stopped using animals in research</th>
<th>Altered the way I use animals in research</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group One – Animal Researchers</strong></td>
<td>45.5</td>
<td>25</td>
<td>5.7</td>
<td>0</td>
<td>1.1</td>
<td>0</td>
<td>1.1</td>
<td>19.3</td>
</tr>
<tr>
<td><strong>Group Two – Animal Research Support Services</strong></td>
<td>47.8</td>
<td>30.4</td>
<td>0</td>
<td>4.3</td>
<td>0</td>
<td>47.8</td>
<td>4.3</td>
<td>21.7</td>
</tr>
<tr>
<td><strong>Group Three – New Welfare Organisation</strong></td>
<td>73.8</td>
<td>90.6</td>
<td>85.9</td>
<td>62.5</td>
<td>35.2</td>
<td>7</td>
<td>8.2</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Group Four – Animal Rights Organisation</strong></td>
<td>81.7</td>
<td>92.8</td>
<td>90.4</td>
<td>74.5</td>
<td>45.2</td>
<td>2.9</td>
<td>3.4</td>
<td>1</td>
</tr>
</tbody>
</table>

Table IX: I do support the use of animals in research because

<table>
<thead>
<tr>
<th></th>
<th>Animals do not suffer</th>
<th>It is justified by the benefits it brings</th>
<th>It is necessary</th>
<th>Suffering is minimised</th>
<th>No alternatives are available</th>
<th>Modern medicine wouldn’t be where it is today otherwise</th>
<th>Animal research is well regulated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group One – Animal Researchers</strong></td>
<td>21.6</td>
<td>56.8</td>
<td>33</td>
<td>61.4</td>
<td>30.7</td>
<td>47.7</td>
<td>37.5</td>
</tr>
<tr>
<td><strong>Group Two – Animal Research Support Services</strong></td>
<td>17.4</td>
<td>69.6</td>
<td>56.5</td>
<td>65.2</td>
<td>73.9</td>
<td>69.6</td>
<td>69.6</td>
</tr>
<tr>
<td><strong>Group Three – New Welfare Organisation</strong></td>
<td>0.4</td>
<td>2.7</td>
<td>3.9</td>
<td>1.6</td>
<td>4.3</td>
<td>5.9</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Group Four – Animal Rights Organisation</strong></td>
<td>2.4</td>
<td>1</td>
<td>1.4</td>
<td>1.4</td>
<td>2.4</td>
<td>4.8</td>
<td>1.4</td>
</tr>
</tbody>
</table>
Table X: I do not support the use of animals in research because

<table>
<thead>
<tr>
<th></th>
<th>It is immoral</th>
<th>It is unnecessary</th>
<th>Animals suffer</th>
<th>There are better ways of researching</th>
<th>The benefits are overstated</th>
<th>Researchers are unaccountable</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group One – Animal Researchers</strong></td>
<td>5.7</td>
<td>8</td>
<td>21.6</td>
<td>20.5</td>
<td>12.5</td>
<td>4.5</td>
</tr>
<tr>
<td><strong>Group Two – Animal Research Support Services</strong></td>
<td>4.3</td>
<td>4.3</td>
<td>4.3</td>
<td>8.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Group Three – New Welfare Organisation</strong></td>
<td>76.6</td>
<td>69.5</td>
<td>91.8</td>
<td>79.7</td>
<td>75.8</td>
<td>80.5</td>
</tr>
<tr>
<td><strong>Group Four – Animal Rights Organisation</strong></td>
<td>86.5</td>
<td>86.1</td>
<td>96.6</td>
<td>91.8</td>
<td>87</td>
<td>82.2</td>
</tr>
</tbody>
</table>

The survey findings paint a mixed picture. They demonstrate that many of those sampled, even when they derive professional or financial benefit from the use of animals, have concerns about that form of animal use. 25 per cent of the researchers and 30.4 per cent of the support staff choose products not tested on animals where possible. However, despite their concerns, in both cases more than half those who use animals in research feel that use is justified by the benefits it brings. That suggests that despite the suffering, the benefits are too great to forgo. It may be that some from the animal use group responded in the way they did because they seek to justify their involvement in animal research either to themselves or to others. However, whether that is the case or not is not clear from the survey. It may be that the responses provided by researchers and support staff represent their reflective, sincere, unbiased beliefs. Furthermore, although only a
small percentage of respondents from the two animal groups supported the notion that animal research could be justified by the benefits it generates, it is nonetheless unclear whether they would be prepared to forgo those benefits entirely. After all, it is one thing to choose a face cream that has not been tested on animals, and another to boycott life-saving drugs. Respondents from animal protection organisations may respond to that proposition by asserting that animal research does not generate benefits. However, that is not an argument which is well-supported by evidence, despite considerable problems with the animal model. The other argument animal protection organisation respondents might engage is that alternatives could be used. The identification and implementation of alternatives is a potentially fruitful path towards the cessation of the use of animals in research. However, switching from the use of animals to alternatives would be at best a gradual process, although arguably one that may be accelerated by enhanced visibility.

Given the uncertainty that surrounds increased visibility, the impact of the equality principle may be that it sets the bar lower than it is currently set for some animals. However, even if this were to occur, equal consideration for animals could still be beneficial for a couple of reasons. The first is that the number of animals for whom the bar is already set low far outnumbers the animals who benefit from strong state-sponsored interest protection. Around 164 million cats and dogs are maintained as companion animals in homes across the USA (Animal Pet Products Manufacturing Association nd). By contrast, around 10 billion animals are killed in the US every year for food and fibre (Singer 2005). The ratio is similar in other parts of the developed world. That means that if an equity approach to animal protection was employed, the
animals with the potential to benefit from the new arrangements greatly outnumber those who stand to lose.

The second reason such an approach is justified, despite the risk, is that the overwhelming majority of harms to which animal advocates object occur behind closed doors, with the result that the public is largely unaware of their occurrence. Abattoirs, factory farms, and research laboratories are not publicly accessible spaces, and as such are largely socially invisible. An equity approach to animal protection would have the effect of establishing what most people think is, or is not, appropriate behaviour towards nonhuman animals. It would allow the citizenry to be directly involved in the decision making process. If animals in zoos were housed according to the same standard applied to pregnant sows in the pork industry, a decision could be reached as to what an informed group of citizens considers an appropriate housing standard.\textsuperscript{142} That standard would then be applied across the spectrum of captive animals. If the decision reached was one in which it was deemed appropriate to exhibit complex, social animals in cages marginally larger than their bodies, that would be a negative outcome for the animals concerned.\textsuperscript{143} However, if such a decision were arrived at by an informed public, then, borrowing the terminology employed by liberal theorist Brian Barry, the decision would have to be viewed as ‘legitimate but bad’ (Barry 1995:150). That decision would remain open to revision. Furthermore, even if the decision reached had a negative impact on the lives of

\textsuperscript{142} It is beyond the scope of this study to prescribe the precise way this could occur. However, deliberative democracy, including citizens’ juries, consensus conferences, and planning cells (Carson 2006:91), provides one possible model. To learn more about deliberative democracy, see Carson \textit{et al.} (2002), Gastil and Levine (2005) and Dryzek (2000).

\textsuperscript{143} For an argument by an animal researcher that the welfare standards for researchers are too high in relation to pig farmers, see Hellekant (2006).
some animals, it would nonetheless be a decision consistent with liberal democratic values. A decision making process underpinned by such principles would seem appropriate within the context of an overarching liberal democratic political system, even if not all people agree with all decisions.

Conclusions

This chapter has revisited arguments formulated in Chapters III, IV and V. In doing so it reiterated that current animal protection arrangements are problematic for two reasons. On the one hand, they do not protect animals according to the same standard used to protect the interests of humans. On the other hand, they do not protect all animals consistently. In this chapter a new model of animal protection was suggested. It is intended to bring animal protection arrangements in line with broader liberal democratic principles by acknowledging that some animals are part of the political process and as such their interests should be safeguarded according to (at least some of) the principles applied to other areas of public policy. Specifically, the principles of equitable treatment and transparency have been nominated as two key liberal democratic principles that should be applied to animal protection arrangements. It has been further argued that they could be applied by bringing the principle of equality to bear on the internal inconsistency. Such an approach would have the benefit of not offending the mainstream view that animals and humans are not comparable. Mary Midgley defines liberal equality as ‘a tool for rectifying injustices within a given group’ (Midgley 1983:67). In this case,
captive animals are thought to constitute a group. Given the liberal commitment to

In this chapter however, it was also acknowledged that it is impossible to know how the

equity, even if the liberal orthodoxy steadfastly refuses to include animals alongside
the public would in fact respond to the proposed animal welfare model. Yet despite the
humans for the purpose of moral consideration, it would seem difficult to deny animals

inability to predict what the outcome of an equitable model of animal protection would

equity among animals only. The proposed model would also address the problem of
be, it is nonetheless a worthwhile model. The reason it is worthwhile is that the number
visibility by tying the level of interest protection all animals receive to the level of
of animals currently in receipt of weak interest protection is far in excess of those that are
interest protection the small number of visible animals have available to them.
protected well before the law, so a greater number stand to benefit than have the potential
to be negatively affected. Furthermore, by applying the equitable principle to the

Furthermore, by applying the equitable principle to the

regulation of animal protection, the problem of citizens being excluded from the decision

making process due to a low level of visibility would be alleviated. An equitable model

making process due to a low level of visibility would be alleviated. An equitable model

of animal protection is a democratic model and it would allow the community to debate

of animal protection is a democratic model and it would allow the community to debate

animal welfare standards from an enlightened perspective.
Chapter XI: Conclusions

Conclusions

The value of this study is twofold. On the one hand, it provides evidence in support of the claim that some instances of legalised animal suffering may be partly attributed to public ignorance. Since the rebirth of the modern animal protection movement in the 1970s, animal advocates have asserted that, when it comes to domestic animals, ‘out of sight means out of mind.’ Because of this, progressive animal protection organisations have commonly viewed their role as drawing the public’s attention to what they perceive to be instances of hidden animal cruelty. It is commonly thought that by making more people aware of how animals suffer, public opinion may be mobilised in opposition to that suffering. Although this dissertation has not examined the impact of lobbying on animal welfare laws, or the effectiveness of the work undertaken by animal protection organisations to publicise animal suffering, it nonetheless lends some legitimacy to the publicity role animal advocates have assigned themselves by demonstrating that enhancing animal visibility is associated with stronger statutory protection.

This study does not demonstrate that an animal’s level of visibility is the only factor informing the type of statutory protection the animal receives. In fact, this study does not claim that visibility is the most important factor. Rather, it suggests that visibility is one significant factor that accounts for why some animals are better served by animal protection legislation than others.
The conclusion concerning the importance of visibility in influencing the state’s willingness to protect animals from harm was reached via an examination of contemporary animal protection arrangements in NSW and the origins of statutory animal welfare in Britain in the nineteenth century. In the NSW case, two trends were identifiable. The first was that high-visibility animals received a greater volume of protective legislation, and the details of those laws were superior to those available to low-visibility animals. The second was that dogs as a species, independent of their industrial use, were afforded preferential treatment when compared to hens, rabbits, and horses. Some protective instruments explicitly accounted for that preferential treatment via reference to the close relationship many people have with dogs. However, even though dogs as a species are afforded stronger protection than other animals as a whole, within the dog species group their level of protection also increased when they were used for high-visibility purposes and declined as their level of visibility declined. It is apparent from the NSW study that animal welfare legislation is biased and that visibility is an influencing factor.

However, this trend as it was observed in NSW was not without exception. It is not possible to conclude from the NSW legislative examination that high visibility guarantees strong protection. The most significant exemption in the NSW case was the absence of strong legislative protection for horses used in flat races. Racehorses have a high level of direct popular visibility and indirect popular visibility via the media, yet they are afforded only the basic protection available to all animals – except Research and Education
Animals and some Law Enforcement and Assistance Animals – under POCTAA. A visibility explanation for trends in animal protection cannot account for the low level of protection provided to racehorses.

In the case of the British legislative analysis there also appears to be a bias towards strong protection for high-visibility animals. An analysis of the protections contained in animal welfare bills and acts put forward from 1800 lends support to the suggestion that there is a link between visibility and the state’s willingness to act in defence of certain animals. An examination of Hansard suggests that legislators actively sought to protect the animals they saw suffering around them. Furthermore, the 89 year gap between the provision of welfare protection for London carthorses and equines deployed in the mining industry is strong evidence in support of a visibility explanation to account for animal protection inconsistencies.

Not only does the British case support the suggestion that visibility is a factor which may be used to account for why some animals are better protected than others, but the nineteenth century study also suggests that the state may be willing to act to protect animals from harm when they have a high level of visibility, even when they are economically productive and their protection may therefore have economic implications. Such a finding is significant. Although that conclusion may not be directly applicable to the modern case, it does suggest that it may be relevant and further research is needed to prove or disprove that relationship in the contemporary setting.
The other valuable element of this research is that it provides a critique of liberal-based animal protection theories. It shows that when modern animal protection theorists deploy liberal-based arguments in favour of animal protection they do so by seeking to demonstrate that the protective principles humans attributes the human species are equally applicable to (some) nonhuman animals. Such theorists further argue that the practice of denying human-derived protection principles to nonhuman animals is prejudicial behaviour, with species membership as the basis for that discrimination. Such theorists seek to remedy what they see as a problematic case of species bias by arguing that where animals have comparable interests to humans those interests should be viewed in a comparable way. In practice this means drawing some nonhuman animals into the human moral or legal circle.

While this study has provided a critique of popular liberal-based approaches to animal protection, it has also proposed a new approach to animal protection. Although it is difficult to isolate what it is about the human species which means the interests of humans should always take precedence over the interests of other animals, it is nonetheless the case that the mainstream has rejected the suggestion that the protective principles used to safeguard the interests of humans should also be applied to (some) nonhuman animals. Therefore, given the failure of pro-animal theorists to convince the mainstream that strong interest protection for humans and weak interest protection for animals is morally wrong, it has been suggested that a way to secure stronger welfare protection for animals, while not offending the powerful notion of human superiority, may be to pursue the principle of equal consideration within the animal group.
The application of the equality principle to the way animals are protected from harm would have a range of benefits. First, it has the potential to alleviate the problem this thesis has identified of animals with a low level of visibility being vulnerable to weaker statutory protection than high-visibility animals. It would do so by tying the level of protection afforded high-visibility animals to the level of protection afforded low-visibility animals. Second, an equitable model of animal protection would have the benefit of engaging the public in the process of establishing what level of care animals are owed. Because animals are raised for meat, researched on, slaughtered, and used in many other ways beyond the gaze of most citizens, it is difficult to avoid the conclusion that many people know little about the lives and deaths of the animals who are the subject of legislation enacted within the context of a liberal democratic political system – a system intended to include the views of the citizenry in the decision making process. Furthermore, interviews with active members of the Australian animal protection movement suggest that many animal advocates feel that the invisibility of most industrial animal uses means that even if the community is vaguely aware that animal suffering takes place, because people are removed from it they do not have to address its occurrence. The information presented here suggests animal advocates may be correct in that assumption.

When considered as a whole, this study contributes to the level of understanding both scholars and animal protection practitioners have about the nature of bias in animal protection arrangements and the role the community’s exposure to animals plays in
influencing which animals are strongly protected from harm and which animals are not. Yet despite the contribution this research makes to thought in the field of animal protection, the research presented here has a number of shortcomings. They can be divided into two groups: those that are theoretical in nature and those that are pragmatic. Each will be considered in turn.

Some Unresolved Conceptual Problems

Beginning with some conceptual problems posed by this research, the first matter to arise is that in some accounts of liberal democratic political systems, some form of negative discrimination is thought permissible, especially if it occurs for the greater common good. The most prominent example of this is in the case of military combat. The protection afforded soldiers has implications for animal protection inconsistencies because while members of the military are engaged in normal civilian activities their interests, including their right to life, are protected according to the normal mechanisms available to all. However, while engaged in conflict, the individual’s right to life is no longer absolute. Not only are military personnel expected to engage in potentially life-threatening behaviour during battle, but on some accounts it is permissible to kill conscripts who refuse to fight. If that principle is accepted as sound then it may be argued that it is legitimate for liberal democratic governments to discriminate against certain animals when they are engaged in significant activities. Essential medical research may be a case in point.
Moreover, the principle of necessary suffering is not the exclusive domain of animal protection legislative arrangements. Although I am not aware of another area of public policy where the contestable element of the regulation is framed in terms of necessary suffering, nonetheless it is common for the state to deploy ambiguous language in order to encompass a broad range of scenarios which may be applicable to the regulatory area. For example, it is common for the concept of reasonable force to be applied to matters of self-defence. What level of harm one individual may appropriately inflict on another in order to protect their own interests is a legal principle not unlike the notion of necessary suffering. One may argue that the concept of necessary suffering is a legitimate legislative and judicial tool used to negate complex arrangements where mitigating factors inform the manner in which individual acts should be understood. The animal protection model proposed here would compromise the concept of necessary animal suffering. That may be argued to be problematic.

Furthermore, political theorist Serge-Christophe Kolm has argued that some measures which seem, on the face of it, to alleviate inequality in fact perpetuate it. The example he offers in A Companion to Contemporary Political Philosophy (2000) is one in which nine individuals have two units and one has none. An advocate to equality may assert that one individual should surrender one unit to the individual without any in order to redress the inequality. However, it may also be argued that such an act in fact increases inequality as it results in two individuals having less units than the majority of the group (Kolm 2000:456). What equality means in practice, and how it is best achieved, is not
straightforward. It has also been acknowledged that the animal protection model presented in this study may result in poorer outcomes for certain types of animals. It could be asserted that poorer outcomes based on the principles of equality renders the principle meaningless as equality is intended to produce just outcomes, not increase hardship. Such an argument may cast doubt on the value of the proposed model or its application to liberal principles intended to protect individuals from harm.

Limitations of this Study

Turning now to practical problems associated with this research, this study is limited to two case studies: animal protection arrangements in modernising Britain and current animal welfare statutory intervention in a single state of Australia. The extent to which the findings presented here can be read into the structure of animal protection legislation in other jurisdictions is unknown. Furthermore, the NSW case focused exclusively on four species of animals so variant results may be possible where the primary research is carried out in another way.

This thesis also gives no account of how contemporary lobbying and powerful financial influences inform the animal welfare policy development process. This study has been a macro-level study into trends in animal protection legislation. Further work could be done by analysing the forces which influence policy development and political decision making, and juxtaposing them against a visibility analysis. The purpose of this would be
to ascertain the extent to which political influence could be said to trump popular concern for animal suffering. Furthermore, as acknowledged in the body of this dissertation, the study cannot account for some significant exemptions to the visibility principle. The most striking anomaly is the protection afforded racehorses, which appears to pose a serious challenge to a visibility account of bias in statutory animal protection. Research into how animal welfare laws are formulated could go some way to resolving some of those problems.

Finally, this thesis does not make any suggestion about how the principle of equitable animal welfare protection could be pragmatically applied in law. Legal inconsistencies are commonplace and often occur as a result of the complex nature of public policy. The model presented here is theoretical only and does not take into account the pragmatic challenges inherent in creating welfare legislation, especially in the absence of fundamental protections of animals. The model proposed here is entirely abstract and sufficient information has not been provided to allow an analysis of how it could be constructed and what its effect might be. Most of the unresolved theoretical problems generated by this research pertain to the way animal protection arrangements apply to liberal democratic thought, and their pragmatic application to the practice of public policy regulation. Further conceptualisation of how animal welfare law may be developed in a manner more consistent with liberal democratic objectives would be the most interesting potential for future research on this topic.
Appendix I: British Animal Welfare Bills and Acts 1800–1911

1800  Bill for Preventing the Practice of Bull-baiting and Bull-running
1802  Bill for Preventing the Practice of Bull-baiting and Bull-running
1809  Bill to Prevent Malicious Cruelty to Animals
1821  Bill to Prevent the Cruel and Improper Treatment of Cattle
1822  Act to Prevent Cruel and Improper Treatment of Cattle (Martin’s Act)
1823  Bill to Alter and Amend Act to Prevent Cruel and Improper Treatment of Cattle
1824  Bill to Prevent Bear-baiting and Other Cruel Practices
      Bill to Alter and Amend Act to Prevent Cruel and Improper Treatment of Cattle
      Bill to Amend Act for Regulating Houses for Slaughter of Horses
1825  Bill to Prevent Bear Baiting and Other Cruel Practices
      Bill to Extend Act to Prevent Cruel and Improper Treatment of Cattle
      Bill to Amend Act for Regulating Houses for Slaughter of Horses
1826  Bill to Extend Act to Prevent Cruel and Improper Treatment of Cattle
1831–32 Bill to Consolidate and Amend Laws Relating to Cruel and Improper Treatment of Animals
1834  Act for the More Effectual Administration of Justice in the Office of a Justice of the Peace in the Several Police Offices Established in the Metropolis and for the More Effectual Prevention of Depravations on the River Thames and in the Vicinity for Three Years
1835  An Act to Consolidate and Amend the Several Laws Relating to the Cruel and Improper Treatment of Animals and the Mischief Arising from the Driving of the Cattle, and to Make Other Provisions in Regards Thereto
1839  Metropolitan Police Act

This list was compiled using the Chadwyck-Healey index system at Westminster Archive Library, London. As I live in Sydney, Australia, I was unable to crosscheck information once I left the UK. In cases where the full name of the act was not properly recorded, the title has been taken from Radford (2001), pp xxxvi–xxxviii. Where a bill resulted in the enactment of a law, reference is made only to the act.
1840  Bill to Prohibit the Use of Dogs as Beasts of Draught Burthen
1841  Bill to Prohibit the Use of Dogs as Beasts of Burthen
1843  Bill to Prohibit the Use of Dogs as Beasts of Burthen
1844  Bill to Amend and Render More Effectual Act for Regulating Places Kept for Slaughtering Horses
1847–48  Bill for More Effectual Prevention of Cruelty to Animals
1849  An Act for the More Effectual Prevention of Cruelty to Animals
1854  Act to amend an Act of the Twelfth and Thirteenth Years of her Present Majesty for the More Effectual Prevention of Cruelty to Animals
1857  Bill for the More effectual Prevention of Cruelty to Animals (Lord’s Amendments)
1857–58  Bill for the More effectual Prevention of Cruelty to Animals (Lord’s Amendments)
1859  Bill for the More effectual Prevention of Cruelty to Animals (Lord’s Amendments)
1861  Bill for the More effectual Prevention of Cruelty to Animals (Lord’s Amendments)
1869  Sea Bird Preservation Act
1867  Act to Regulate Traffic and the Metropolis and of Other Purposes
1874  Bill to Amend Laws Relating to Cruelty to Dumb Animals
1875  Bill to Prevent Abuse and Cruelty in Experiments on Animals for Purposes of Scientific Discovery
1876  Act to Amend the Law Relating to the Cruelty to Animals
1877  Bill to Make More Effectual Provision for Prevention of Cruelty to Animals
1878  Bill to Make More Effectual Provision for Prevention of Cruelty to Animals
1878–79  Bill to make More Effectual Provision for Prevention of Cruelty to Animals
1881  Bill for Total Abolition of Vivisection
1882  Bill to Amend Act for Prevention of Cruelty to Animals
1883  Bill to Amend Act for Prevention of Cruelty to Animals
       Bill for the Abolition of Vivisection
1884  Ill-treatment of Cattle Act
1887  Coal Mines Regulations Act
1893–94  Bill to Prohibit Hunting Coursing and Shooting of Animals Kept in
            Confinement
1894  Act to Enable Police Constables to Cause Horses and Certain Other
       Animals when Mortally or Seriously Injured to be Slaughtered (injured
       animals)
1895  Bill to Prohibit Hunting
1896  Bill to Prohibit Hunting
1898  Bill to Prohibit Hunting
       Bill to Make Further Provisions for Prevention of Cruelty to Animals
1900  Act for the Prevention of Cruelty to Wild Animals in Captivity
1906  Bill to Provide for the Total Abolition of Vivisection
       Dogs Act
1907  Injured Animals Act
1908  Bill to Provide for the Total Abolition of Vivisection
1909  Bill to Provide for the Total Abolition of Vivisection
1910  Disease of Animals Bill
       Bill to Provide for the Total Abolition of Vivisection
1911  Protection of Animals Act
       Coal Mines Act
       Act to enable Orders to be Made Under the Diseases of Animals Act for
       Protecting live Poultry from Unnecessary Suffering and for Other
       Purposes Connected Therewith
       Bill to provide for the Total Abolition of Vivisection
Appendix II: Interview Questions

Q1: How long have you been involved in the animal protection movement?

Q2: What role do you play in the movement?

Q3: What motivated you to become involved?

Q4: What do you see as the fundamental problem/issue facing animals today?

Q5: Do you think animal welfare legislation treats all animals fairly? If the response is ‘no’:

   Q5a: Which animals do you think are treated the best and which do you think are treated the worst by either the government or ‘the law’?

   Q5b: Why do you think that is?

Q6: In your experience, how aware do you think members of the wider community are about the way we treat animals?

Q7: If you could effect one change in the way we treat animals in our society, what would you like that to be?

Q8: What do you think the single most important thing people advocating for animals can do in order to help protect them from harm?

Q9: If captive animals are understood as falling into six different groups:

   ➢ Companion
   ➢ Research
   ➢ Agricultural
   ➢ Exhibited
   ➢ Sports and Gaming
   ➢ Law Enforcement and Assistance Animals

   what type of animal would you like to be? Why?
## Appendix III: Detailed Analysis of where Interview Participants Fit along the Animal Protection Continuum

<table>
<thead>
<tr>
<th>Organisation with which interviewees were primarily associated</th>
<th>Their response to an interview request</th>
<th>The position occupied along the animal protection continuum by the organisation the interviewee represents</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW Animal Research Review Panel</td>
<td>Agreed to be interviewed.</td>
<td>All animal research conducted in Australia must be approved by an Animal Ethics Committee, and in turn all research facilities in NSW must be licensed by the NSW Government. The government receives its advice on licensing matters from the Animal Research Review Panel. That function is best understood as coming under the auspices of the animal protection bureaucracy.</td>
</tr>
<tr>
<td>Animal Welfare Unit, NSW Department of Primary Industries</td>
<td>Agreed to be interviewed.</td>
<td>The NSW Department of Primary Industries’ Animal Welfare Unit provides secretariat support to the NSW Animal Research Review Panel, the NSW Animal Welfare Advisory Council and the NSW Exhibited, Sports and Gaming Board. The Animal Welfare Unit runs an inspectorate and is also responsible for licensing decisions. The NSW DPI is best understood as coming under the auspices of the animal protection bureaucracy.</td>
</tr>
<tr>
<td>University of Sydney</td>
<td>Agreed to be interviewed.</td>
<td>The University of Sydney runs its own animal ethics committee to oversee animal research and education at the University. The University of Sydney is a government agency only in the broadest sense. However, the University itself constitutes a large bureaucracy.</td>
</tr>
<tr>
<td>NSW Royal Society for the Prevention of Cruelty to Animals (RSPCA)</td>
<td>Agreed to be interviewed.</td>
<td>The RSPCA has been discussed in detail in Chapters VI and VII. The NSW RSPCA does not seek to abolish animal use or to challenge the legitimacy of animal farming or animal research. The RSPCA is also strongly focused on companion animal issues, with re-homing and the provision of accessible desexing programs a core function. The RSPCA NSW is therefore most appropriately classified as an old welfare animal protection organisation.</td>
</tr>
<tr>
<td>Australia and New Zealand, the World Society for the Protection of Animals (WSPA)</td>
<td>Agreed to be interviewed.</td>
<td>WSPA Australia campaigns on a number of different platforms. One of its most significant focuses is on improving animal protection legislation and the creation of international animal protection standards (WSPA 2007a). WSPA also campaigns directly on a number of animal</td>
</tr>
</tbody>
</table>
protection issues, including opposition to factory farming with the aim of improving the wellbeing of all animals used in agriculture around the world (WSPA 2007b). Furthermore, WSPA opposes bullfighting in Spain, bear-baiting in Asia, and works to desex stray dogs in Africa. WSPA states that it ‘aims to promote humane education programmes to encourage respect for animals and responsible stewardship, and laws and enforcement structures to provide legal protection for animals’ (WSPA 2007c). WSPA’s commitment to the principle of stewardship and its close working relationship with the United Nations suggests it is best understood as an old welfare organisation.

| **Humane Society International (HSI)** | This interviewee asked that the questions be read to her over the phone because she was concerned she was not sufficiently focused on animal welfare issues to be able to answer effectively. After hearing the questions a decision was made to go ahead with the interview. However, the interview was cancelled due to an urgent court hearing set down for the same day as the interview. The interview was never rescheduled. The decision was made not to reschedule the interview because of reluctance expressed by the interviewee. As she pointed out, her primary focus is wildlife issues. At the time interviews were arranged, HIS was not employing an animal welfare specialist in Australia. No interview was conducted. | The Humane Society Australia’s website provides limited information about the organisation’s aims and policies. The website does carry a message that states that HSI is ‘[s]eeking to create a humane and sustainable world for all animals … Through education, advocacy and empowerment’ (HSI nda). The Australian site also identifies a number of campaign areas including animals in zoos, the fur trade, factory farming, companion animals issues, and the pet trade in native wildlife. HSI’s statement on factory farming suggests it is best viewed as an old welfarist organisation. It calls for supporters to urge Members of Parliament to improve the welfare of farmed animals. It also suggests supporters may try to avoid animal products produced in factory farms (HSI ndb). Such policies suggest HSI is most appropriately viewed as an old welfare organisation. |
| **Help in Suffering** | Agreed to be interviewed. | Help in Suffering is an Indian-based animal protection organisation. The interviewee is Australian and spends part of each year in Australia and the remainder in India. Help in |
**Suffering’s board is made up of volunteers from around the world. The organisation provides desexing, vaccinations, and veterinary care for sick, injured, and needy animals living in poverty-stricken conditions. Many of the animals aided by the organisation are economically productive, although one of the organisation’s principle programs aids free-living dogs (Help in Suffering nd). Help in Suffering does not seek to challenge the human use of animals, but rather seeks to alleviate animal suffering where possible. It is therefore best understood as an old welfare organisation.**

**NSW Young Lawyers Animal Rights Committee**

Agreed to be interviewed. The NSW Young Lawyers Animal Rights Committee ‘comprises a group of lawyers interested in animal welfare and laws regulating the treatment of animals’ (NSW Young Lawyers ndb). The organisation’s website also states that the aims of Committee members are to educate themselves and the community about animal welfare law, and lobby for ‘appropriate law reform’ (NSW Young Lawyers ndc). Despite the Committee’s name, it does not make any reference to animal rights or abolition on its website. The Committee’s primary function appears to be providing government with analysis and critiques of animal protection law and offering suggestions on how those laws may be enhanced to the benefit of the animals under regulation. The Committee also provides interested parties with information on the structure and meaning of animal protection laws. The organisation does not seek to challenge the legitimacy of animal use. However, many of the key players involved in the organisation are vegetarian or vegan and the organisation has hosted forums on legal rights for animals. The organisation has also put considerable resources into a host of animal protection issues and has not tended to focus primarily on Companion Animals. The NSW Young Lawyers Animal Rights Committee is therefore best understood as a new welfare organisation.

**Animals Australia (AA)**

Agreed to be interviewed. AA states on its website that its ‘goal is to significantly and permanently improve the welfare of all animals in Australia’ (Animals Australia ndc). AA’s Executive Director sits on a number of regulatory bodies, including the Victorian Animal Welfare Advisory Council. However, although AA meets many of the criteria of an old welfare organisation, it is more appropriately understood
as new welfarist – that is, more progressive. There is a number of reasons such a classification is more accurate. First, the RSPCA is not a member society and the New Zealand Society for the Prevention of Cruelty to Animals withdrew from the federation in 2004, suggesting both Societies construe AA’s aims and/or methods as not sufficiently aligned with their own. Furthermore, AA does not have any law enforcement authority and in 2004 it undertook an extensive ‘undercover’ investigation into the Australian live export industry. The organisation states on its website that its aim is to end the Australia live export trade (Animals Australia ndd). AA is therefore best viewed as a new welfare organisation.

| Animal Liberation NSW | Agreed to be interviewed. | The ideology informing Animal Liberation NSW has already been discussed. The philosophical position formulated by Singer, and the approach taken by the organisation, is consistent with a new welfare ethic. For example, Animal Liberation NSW’s biggest campaign in 2005 was focused on banning the use of sow stalls for pregnant sows. That campaign did not challenge the raising of pigs for meat *per se*, but rather sought to reform the conditions under which the animals are raised (Animal Liberation NSW ndd). Most, if not all, members of Animal Liberation would be likely to wish for an end to all pig farming. However, in the interim the organisation seeks to alleviate the suffering of as many animals as it can by whatever means possible, including reformist activity. Animal Liberation NSW tends to focus its energy on agricultural animals. Animal Liberation NSW is therefore best viewed as a new welfare organisation. |
| Voiceless | Agreed to be interviewed. | Voiceless identifies establishing the legal principle of rights for animals as one of the aims of its legal branch (Voiceless ndb). That aim suggests the organisation may be perceived as an animal rights organisation. However, Voiceless lists its other aims as awarding grants to assist likeminded organisations, education, and ‘work to modify or create legislation and policies to protect animals’ (Sherman *et al.* 2005:1). Its primary |

---

145 The word ‘undercover’ is used by progressive animal advocates in Australia to mean the practice of information gathering, often in the form of video evidence. Such footage is obtained by trespass or the use of hidden cameras in public places.
function is the sponsorship of research and community grants for people undertaking work on behalf of animals and youth education through their ‘kids clubs.’ In 2005 Voiceless also produced a report into pork production in anticipation of a review of the Australian *Model Code of Practice for the Welfare of Animals – Pigs*. All such activities are more consistent with new welfare principles. A review of the organisation’s grant recipients in 2005 also supports such an analysis. One grant went to aid outreach programs by Animal Liberation South Australia. Two went to organisations campaigning against the live export of animals out of Australia, one went towards an educational program for Aboriginal communities, an animal issues radio program, and an animal awareness film night. All such funding allocation suggests Voiceless is best understood as a new welfare organisation.

<table>
<thead>
<tr>
<th>Voiceless</th>
<th>Agreed to be interviewed.</th>
<th>As above.</th>
</tr>
</thead>
<tbody>
<tr>
<td>World League for Protection of Animals (WLPA)</td>
<td>Agreed to be interviewed.</td>
<td>WLPA is highly specialised on two issues: wildlife protection and Companion Animals. On both those issues they have adapted an abolitionist perspective. They are fundamentally opposed to the commercialisation of Australian wildlife, especially the kangaroo industry. They also do a lot of work supporting Companion Animals in need, and re-homing cats and dogs. With regards to their work with cats and dogs they have a ‘no kill’ policy in place. They also support free-living cat colonies although they seek a reduction in such colonies through desexing programs. Both their work with wildlife and Companion Animals suggests WLPA should be classified as a strictly animal rights organisation. However, not everything about the operation is consistent with animal rights principles. WLPA has had a longstanding working relationship with Animal Liberation NSW and is also a member of AA and the NSW Animals Society Federation. All three organisations are classified as new welfarist. Furthermore, WLPA is not a strictly vegetarian organisation and does not promote itself as such. Therefore, although their two primary campaign areas are consistent with animal rights principles, overall WLPA is most appropriately construed as a new welfare organisation.</td>
</tr>
<tr>
<td>People for the Ethical Treatment of Animals (PETA)</td>
<td>This interviewee agreed to be interviewed on the condition that it be understood that he wasn’t formally speaking on behalf of PETA. PETA has no formal representatives in Australia, but it does make resources available to individuals on a voluntary basis. However, the interview was cancelled due to conflicting commitments on behalf of the interviewee. Two attempts were made to reschedule the interview but those attempts were unsuccessful. No interview was conducted.</td>
<td>PETA is widely considered to be an animal rights organisation. However, the organisation’s activities are not consistent with a scholarly understanding of animal rights. PETA has repeatedly shown itself willing to negotiate with animal industries. Examples of such negotiations include their work with KFC, and their Australian live export and mulesing campaigns. In all cases PETA has worked with industry groups in order to achieve a reduction in the level and type of suffering animals experience. Francione argues that “[Peter] Singer and PETA together have eviscerated the animal rights movement in the United States” (Hall 2002). This is because PETA does not pursue the abolition of nonhuman animals’ current legal property status. It also supports regulatory animal welfare laws (Hall 2002). PETA is therefore best understood as a new welfare organisation.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Australian Association for Humane Research (AAHR)</td>
<td>Agreed to be interviewed.</td>
<td>AAHR states its aim as being the ‘abolition of all experiments using animals’ (AAHR ndb). AAHR does not participate in Animal Ethics Committees or other forms of research regulation. It is therefore best viewed as an animal rights organisation.</td>
</tr>
<tr>
<td><em>Abolitionist-Online: A Voice for Animal Rights</em></td>
<td>Agreed to be interviewed.</td>
<td><em>Abolitionist-Online</em> does not carry a mission statement or a statement of aims. However, the content of the ezine is strongly skewed towards an animal rights/abolitionist position and is critical of the animal welfare philosophy. In the first edition, the editor wrote: ‘What does it mean to be an abolitionist animal rights activist? The attitudes existing in society and within the animal rights movement is still too contradictory towards nonhuman animals. … once hard-line animal rights activists are now seen putting their full support behind so-called “humane” slaughter legislation and/or organic “meat” practices. Call that what you want, but it’s not animal rights’ (Vaughan 2005b). <em>Abolitionist-Online</em> is best understood as a publication promoting animal rights values.</td>
</tr>
<tr>
<td>Animal Liberation Victoria (ALV)</td>
<td>An email was sent to this individual requesting an interview. No response was received to that email. No interview was conducted.</td>
<td>Animal Liberation Victoria has already been discussed briefly. ALV identifies itself strictly as an animal rights organisation (Animal Liberation Victoria ndc), including work on a campaign called ‘KFC Cruelty.’ That campaign was initiated by PETA and the way in which it has</td>
</tr>
</tbody>
</table>
been conducted by PETA is most appropriately described as a new welfarist campaign. Indeed, on PETA’s website it states that ‘PETA is asking KFC to eliminate the worst abuses that chickens suffer on the factory farms and in the slaughterhouses of its suppliers, including live scalding, life-long crippling, and painful debeaking’ (PETA nd). Such an approach is not consistent with animal rights principles. However, despite its association with PETA, ALV has sought to distance itself from such reformist ambitions, including in its campaign work against KFC. The organisation’s overall aims means it is appropriate to classify the organisation as an animal rights organisation, although it is worth noting that some of ALV’s activities do leave it vulnerable to a claim that it is not sufficiently abolitionist.

| International Fund for Animal Welfare (IFAW) | This interviewee requested a list of questions. After sending the list of questions two follow up emails were sent. No response was received to either email. No interview was conducted. | IFAW was formed in opposition to the commercial hunting of Whitecoat Harp Seals in Canada. IFAW has expanded around the world and has become active on a range of issues since its inception 30 years ago. However, IFAW has retained a focus largely consistent with the organisation’s initial intention, and that is to protect free-living animals and their habitat. IFAW does not undertake programs aimed at captive animals, although it does oppose many forms of wildlife commercialisation such as fur hunting and the ivory trade. The programs IFAW does undertake involving domestic animals deal only with Companion Animals, although IFAW does oppose the Asian dog meat trade (IFAW 2005). IFAW, therefore, does not fit comfortably within the animal protection continuum. The organisation exhibits some characteristics of old and new welfarism, as well as animal rights; however, on balance, IFAW is best understood as a conservation agency. |
Appendix IV: Media Analysis Findings and Notes

Table IX: Animal-Related News Stories over a One-Month Period (May 2004)

<table>
<thead>
<tr>
<th>Categorisation</th>
<th>The Sydney Morning Herald</th>
<th>The Daily Telegraph</th>
<th>The Sun-Herald</th>
<th>The Sunday Telegraph</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free-living Animals¹⁴⁶</td>
<td>18</td>
<td>20</td>
<td>7</td>
<td>3</td>
<td>48</td>
</tr>
<tr>
<td>Companion Animals</td>
<td>9</td>
<td>19</td>
<td>5</td>
<td>14</td>
<td>47</td>
</tr>
<tr>
<td>Exhibited, Sport and Gaming Animals</td>
<td>6</td>
<td>7</td>
<td>0</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td>Agricultural Animals</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td>Research and Education Animals¹⁴⁷</td>
<td>7</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Other Animals</td>
<td>3¹⁴⁸</td>
<td>1¹⁴⁹</td>
<td>1¹⁵⁰</td>
<td>2¹⁵¹</td>
<td>7</td>
</tr>
<tr>
<td>Law Enforcement and Assistance Animals</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
<td>58</td>
<td>16</td>
<td>27</td>
<td>152</td>
</tr>
</tbody>
</table>

Notes:

➢ *The Sydney Morning Herald* and *The Daily Telegraph* are published in New South Wales Monday to Saturday. *The Sun-Herald* and *The Sunday Telegraph* are published on Sundays.

➢ Excluded from the analyses in all papers were the following sections:

- letters to the editor
- editorial

¹⁴⁶ The free-living grouping includes both native and introduced species. Free-lying animals are exogenous to this study. The figure is included here only as a point of comparison, therefore the group has not been broken up into its subcategories.

¹⁴⁷ Only stories pertaining to animals covered by the NSW *Animal Research Act 1985* and the Code were counted in this category.

¹⁴⁸ These stories were: 1) a story about a frog inadvertently served in a salad on a Qantas flight (it is not clear how the frog came to be in the salad); 2) a story about the introduction of new animal welfare laws in Germany; and 3) a story about Indigenous Australians being forced to pose for a photo with a dead kangaroo.

¹⁴⁹ This was a story about a frog inadvertently served in a salad on a Qantas flight.

¹⁵⁰ This was a story about the link between the abuse of animals and abuse of humans.

¹⁵¹ These were: a story about a woman who fell off an elephant while on an overseas trip, and her insurance company would not compensate her for injuries; and a story about a man seeking to cross the Antarctic with sleigh dogs.
• greyhound and horseracing guide.

➢ Of the Saturday edition of *The Sydney Morning Herald*, the following sections were analysed:

- news
- *News Review*
- *The Good Weekend*.

➢ Of *The Sun-Herald*, the following sections were analysed:

- domestic news
- world news
- *Opinion*
- *Sunday Life Magazine*.

➢ Of *The Sunday Telegraph*, the following sections were analysed:

- domestic news
- international news
- *Opinion*
- *The Sunday Magazine*.

➢ Only articles and images pertaining to animals in a living state were included.¹⁵² No recipes for meat or other food-related items were included.

➢ In cases where a story related to animals from more than one category, the story was scored against each relevant category.

➢ Where the same story appeared twice in the one edition of a paper, it was only counted once. This tended to occur especially in the case of the weekend edition of *The Sydney Morning Herald*, where it is common practice to run the same story in both the news and the *News Review* sections.

---

¹⁵² The exception to this was one story about research being undertaken on jewfish. The article was accompanied by a photo of a dead jewfish. The story was nonetheless counted as the discussion was about living fish being used in research.
Appendix V: Legislative Analysis Sample

Hens raised for
meat
Food, water,
drugs

Health care

Freedom of
movement

Conditions of

Regulation is provided by POCTAA, PCAR, Model Code of Practice for the Welfare of Animals: Domestic Poultry 4th Edition (Code), Model Code of
Practice for the Welfare of Animals: Land Transport of Poultry (Code 2) and Model Code of Practice for the Welfare of Animals: Livestock at Slaughtering
Establishments (Code 3).
It is an offence to fail to provide an animal with clean drinking water during a 24-hour period. It is an offence to fail to provide an animal with food in a 24hour period (POCTAA, s 8). All feeding and watering equipment must be checked daily to ensure all birds have access to food and water (Code, s 4.1). Adult
birds must have access to food every 24 hours (Code, s 9). Adult birds should not be deprived of water for longer than 24 hours. Water should be maintained at
a temperature palatable to the birds. The water should be clean and not make birds sick. One day’s water requirement should be available in storage in case of
emergency. All birds must have access to at least two independent drinking points (Code, s 10). Automatic feeding systems should be checked daily for
effectiveness (Code, s 11). When at saleyards, the birds should be placed in pens with access to food and water (Code, s 16). Food and water must not be
withheld from birds for more than 24 hours during the process of transporting them to saleyards and selling them (Code, s 16). A person shall not administer a
poison to a domestic animal (POCTAA, s 15).
A person in charge of an animal shall provide the animal with veterinary care as required (POCTTA, s 5). In the case of adult birds a thorough welfare
inspection must be performed at least once each day. Thorough attention should be given to bird health, injury, behaviours indicative of a problem, feed,
water, ventilation and lighting. Dead birds should be removed for disposal. Injured birds should receive the appropriate treatment without delay. The birds
should be checked regularly for evidence of parasites and infectious diseases. Appropriate action should be taken promptly (Code, s 11). Those caring for
poultry should be aware of the signs of ill health. They include reduced food and water intake, physical changes or abnormal behaviour. If the cause of the ill
health cannot be identified by the person in charge of the animal they should seek professional advice. Vaccinations should be undertaken by people skilled in
the procedure. To prevent problem behaviour, producers should consider selecting the most appropriate strain of birds and rearing methods. If it is likely
cannibalism or feather pecking will occur, environmental factors that may aggravate the problem should be examined. If these measures fail, beak trimming
should be considered in consultation with an animal welfare expert. Entrapped birds must be freed immediately. Dead birds must be removed promptly.
Records must be kept. Medication must be used in accordance with manufacturer’s instructions unless professional advice is given to the contrary. Deformed
or incurably sick birds should be removed from the flock and humanely destroyed as soon as possible. Sick birds may be treated if suitable isolation and
treatment facilities are available and the animal has a good chance of recovery without unreasonable pain, and the health of the overall flock will not be
compromised. Thorough cleaning is recommended before restocking to avoid disease transmission. Buildings should be constructed to prevent wild animals
carrying disease from entering (Code, s 12).
There is no requirement to provide exercise for stock animals (POCTAA, s 9). When poultry are confined in cages there is no requirement that the cage be of
sufficient size to allow the animal to exercise (POCTAA, s 9). Birds must not be confined by means of a tether (POCTAA, s 10). Birds may be trapped with a
trap (other than a steel jaw trap) if they must be caught for the purpose of food preparation or otherwise killing the animal. This should be done in a manner
that inflicts no unnecessary pain upon the animal. An animal may be trapped using a trap (other than a steel jaw trap) for the purpose of catching the animal to
feed the animal to a predatory animal so long as the animal being trapped is part of the prey animal’s diet and feeding the animal is necessary for the prey
animal’s survival (POCTAA, ss 23, 24).
A person in charge of an animal shall not fail to provide the animal with shelter within a 24-hour period (POCTAA, s 8). When hens are raised in barns or are

359


**Confinement**

Free range, their housing floor may consist of litter, slatted flooring or wire. The gap between slats should not exceed 25 mm. The provision of perches is encouraged (Code, s 2.4). A non-ventilated shed may house 28 kilograms of birds for every square metre. A ventilated shed may house 40 kilograms of birds for every square metre (Code, Appendix 2). Young birds reared without their mother require strong lighting on food and water for the first few days to allow them to find it. Light may be decreased after that. Sudden increases in light intensity should be avoided. Light intensity should be such that birds are visible during inspection. Where continuous lighting is used there should be a one-hour blackout period each day to acclimatise the birds in case of blackout. Where the birds do not have natural light they should be given at least eight hours of light per day. Records of light intensity must be kept (Code, s 5). Ventilation is required at all times. Birds should be protected from extreme weather conditions. If ammonia levels can be detected by smell then corrective action should be taken. If ammonia levels continue to rise, immediate corrective action should be taken. Hydrogen sulphide and carbon dioxide levels should be monitored and kept below accepted levels. Mechanically ventilated sheds must have an alarm and electronic backup system (Code, s 6). The behaviour of newly hatched birds should be monitored in order to assess whether the temperature is appropriate for them. Precautions should be taken to minimise stress caused by prolonged panting during periods of high humidity. At such times adequate cool water and ventilation is essential and birds must have access to shade. Under adverse conditions birds must be monitored more frequently. When high temperature causes distress, ventilation systems must be used. To prevent birds from overheating, space must be available to facilitate body heat loss. Temperature control systems must be in place to prevent ambient temperature at bird level exceeding 33 degrees Celsius. Meat chickens close to the end of their growing period may experience high level of mortality if exposed to a large and sudden increase in temperature. Procedures must be put in place to deal with cases of climatic extremes. Temperature must be recorded when appropriate (Code, s 7). Every reasonable effort must be taken to provide protection from predators. Shed should be situated to be safe from floods and fire. Sheds should be alarmed and firefighting equipment available. Alarms should be placed on the outside of the shed to prevent bird panic. Response to alarms should be available at all times. If flooding occurs in litter sheds it should be replaced where practical. When constructing new buildings, thought should be given to designs that minimise fire risk. Sufficient exits should be available so birds may be evacuated during an emergency (Code, s 8). When at saleyards or markets the stocking density should not exceed normal stocking density by more than 50 per cent for more than 12 hours (Code, s 16). Poultry should not be held at saleyards for more than 24 hours (Code, s 16).

**Painful/frightening procedures**

An act of cruelty includes any act or omissions which results in an animal being unreasonably, unnecessarily or unjustifiably beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified, infuriated, overdriven, over-loaded, over-ridden, over-used, exposed to excessive heat or excessive cold or inflicted with pain (POCTAA, s 4(2)). An act of aggravated cruelty occurs if the act of cruelty results in the death, deformation or serious disablement of the animal, or if the animal is so severely injured, diseased or in such a physical condition that it is cruel to keep it alive (POCTAA, s 4(3)). A person shall not commit an act of cruelty against an animal. A person in charge of an animal shall exercise reasonable control over an animal such as to prevent the commission of an act of cruelty against the animal. Where pain is being inflicted on an animal the person in charge of the animal will take reasonable steps to alleviate that pain (POCTAA, s 5). A person shall not commit an act of aggravated cruelty against an animal (POCTAA, s 6). A person shall not abandon an animal (POCTAA, s 11). Electrical devices cannot be used on birds except for an electronic bird detection device (POCTAA, s 16; PCAR, Schedule 1). It is an offence to sell an injured or diseased animal. If an animal is purchased in an unfit state the animal must be promptly destroyed (POCTAA, s 22). There is no requirement for a person who hits a bird with their vehicle to take remedial action (POCTAA, s 14). Electric pulse wires may be used only to train birds not to perch on feed or water containers (Code, s 9). Artificial insemination should be carried out only by competent, trained people. Care should be given to avoiding injury or unnecessary disturbance to the birds. Every effort should be made to avoid beak trimming. It must only be performed by an accredited trainer and only performed in accordance with agreed accreditation standards. Dubbing (which is the removal of the comb) must not be performed. Toe trimming should be limited to the nail. Sharp spurs on adult males may be trimmed. Blinkers or other vision impairment equipment should be used with veterinary advice. They must be applied by a competent operator. If the blinkers could injure the animal they must not be used. Blinkers must only be applied to poultry that have nesting boxes at ground level. Contact lenses must not be used on poultry. Biting devices
should not be used. Castration must not be undertaken. Devoicing must not be undertaken. Pinioning must not be performed. Feather clipping is acceptable.

Wing and leg bands may be used as identification but they must be checked regularly. Webbing between toes may also be used as an identification mark. The mark should be made soon after hatching (Code, s 14). The sale of poultry through saleyards may cause stress and should be avoided (Code, s 16).

**Transportation**

A person shall not transport an animal in a manner that unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal (POCTAA, s 7). A person shall not convey an animal if the animal is unfit (POCTAA, s 13). Care must be exercised to ensure that poultry are not subject to unnecessary stress during catching, loading, transportation and unloading (Code, s 15). Birds must not be carried or held in the boot of a car. Birds must not be held inside a vehicle under conditions when the temperature may exceed 33 degrees Celsius (Code, s 16). Producers are encouraged to adopt new technology that improves the wellbeing of birds during transportation. Sick, injured or weak birds must not be selected for travel. Truck drivers should drive slowly to minimise disturbance to birds. The provisions of regular inspections of the birds must be made depending on the duration of the journey (Code 2, s 1). Birds in transit are subject to the stress of catching and handling; deprivation of food, water, and freedom of movement; changes in climatic conditions; and unfamiliar surroundings, noises, and sensations. In order to minimise stress, unnecessary transportation must be avoided. Any transportation that is required should be carried out safely and in a way that minimises stress, pain, and suffering (Code 2, s 2). Transportation should be planned so as to avoid delays. Birds should not be held in a container for longer than 24 hours if they don’t have access to food and water. Birds must receive feed in the 24 hours prior to transportation and water prior to loading. Every effort should be made to protect the birds from weather extremes. Transportation conditions should be clean. Extra labour must be provided to ensure loading time is not unnecessarily prolonged. There should be sufficient light for all the birds to be inspected during loading. Birds must be transported in properly designed containers. They must not be transported with their legs tied. Crates and cages should be designed so birds are not injured while being removed and placed inside them. The opening should be no less than 20 centimetres wide and 22 centimetres high. There should be no sharp edges protruding. The birds should be fully inside the cage. Containers should be ventilated and sufficiently high for the birds to sit comfortably. Containers should be locked to prevent escape during transportation (Code 2, s 3). Birds of different species must not be mixed in the same transport container. Birds should be handled quietly and in a way that does not cause injury. Bird catchers should be provided with a basic knowledge about animal welfare. Containers should be moved slowly during loading and must not be thrown or purposefully dropped. If mechanical poultry harvesters are shown to be more humane then manual methods, they are recommended. Transportation stocking density will change with weather conditions. For poultry weighing between 2.2 and 3.0 kilograms the maximum density on a cold day is 28 birds per square metre. The minimum height of the container should be 23 centimetres. To aid loading it is helpful to reduce lighting in the shed and quietly corral the birds with a net or screen to the loading door. Poultry must not be lifted by their head, neck, wings, or tail. For broiler hens weighing up to 2.0 kilograms, up to five birds can be carried in each hand (Code 2, s 4). Temperature in vehicles may differ and transporters must be aware of that when considering the birds’ wellbeing. Birds in vehicles require ventilation. Ventilation should provide fresh air, remove smells and gases, and control humidity and temperature. The supply of fresh air must be checked regularly. Shade is necessary on hot days when transport vehicles are stationary. If the temperature of the vehicle exceeds 30 degrees Celsius, the vehicle should not be left stationary for more than 45 minutes. Regardless of the conditions, birds should not be required to sit in a stationary vehicle for more than two hours. Birds should not be transported during the hottest part of the day or on very hot days. Birds should be inspected after 30 minutes of travel and then at regular intervals after that. Injured or distressed birds must be given immediate assistance or humanely killed. Travel must be completed within 24 hours unless all birds have access to food and water (Code 2, s 5). Birds will be more stressed after the journey so more care is required with unloading. Birds for slaughter should be slaughtered as soon as possible. Birds should not be left at the point of slaughter unless someone is there to receive them (Code 2, s 6).

**Death**

Care must be exercised to ensure that poultry are not subject to unnecessary stress while awaiting slaughter. Birds must be slaughtered in a manner that minimises handling and stress. Acceptable slaughter methods include electrical stunning followed by bleeding out, neck dislocation, or decapitation (Code, s 17). Birds awaiting slaughter must be protected from adverse weather conditions. Birds should have adequate ventilation. When required, holding areas should be cooled using one of the following methods: fans, fine water mist, water reticulated over the roof or blinds hung from the roof. Birds awaiting slaughter must
be inspected every hour. If they are in distress, remedial action must be taken. From the time the first bird is caught until the last bird is slaughtered should not take more than 24 hours. Injured birds should be slaughtered immediately. Birds should be placed in shackles humanely. Shackling birds in darkness should be considered. Use of gas stunning while birds are in crates should be considered. Staff should be able to access birds while they are shackled. Birds should be suspended, head down, for no more than three minutes before stunning. Escaped birds should be able to be collected without being injured. If birds are killed by decapitation or cervical dislocation, stunning is not required. Otherwise stunning is required. Stunning should mean the birds are immediately unable to feel pain. Electrical stunning knives are acceptable and are recommended for processing small numbers of birds. Stunning should be sufficient to ensure the bird remains unconscious until he or she is bleed out. Birds that are not adequately stunned should be manually killed (Code 3, s 3). The court may order the destruction of an animal in cases where a person has been convicted of an offence or where the court is satisfied the animal is so severely injured or diseased that it would be cruel to keep the animal alive (POCTAA, s 30).

<table>
<thead>
<tr>
<th>Enforcement</th>
</tr>
</thead>
</table>
| None of the painful or frightening procedures prohibited under POCTAA are prohibited in cases where they were carried out for the purpose of hunting, shooting, trapping, catching, or capturing an animal, or destroying the animal for the purpose of preparing food, so long as no unnecessary pain was caused to the animal, or it was done to feed live prey to an animal (POCTAA, s 24). An officer may require that a person informs the officer of their full name and home address if the officer suspects, on reasonable grounds, that an offence against the Act has been committed (POCTAA, s 24A). If a driver of a motor vehicle is believed to have committed an offence, the person in charge of the vehicle may be required to provide the officer with the driver’s name and address (POCTAA, s 24B). An inspector may apply for a search warrant if the inspector has reasonable grounds for believing that there is on any land an animal against whom an offence is being committed or evidence that an offence has been committed (POCTAA, s 24F). On land used for saleyards or other animal trades, an officer may inspect the land, any animals on the land and any accommodation or shelter provided on the land. An officer may also inspect or examine any register that is kept under the Act and take copies of the register (POCTAA, s 24G). If an officer believes an offence has been committed against Sections 5, 6, 7 or 8 of POCTAA, the officer may stop a vehicle or vessel, enter the vehicle or vessel and examine the animal (POCTAA, s 24H). An inspector may examine an animal if the inspector believes an offence has been committed or is about to be committed against the animal, the animal has not been provided with sufficient food and water in the previous 24 hours, the animal is so severely injured or diseased that it is necessary to provide the animal with veterinary care, or it is cruel to keep the animal alive (POCTAA, s 24I). If an inspector believes on reasonable grounds that the animal is in distress the inspector may take possession of the animal and provide the animal with necessary food, drink or veterinary care (POCTAA, s 24J). If a veterinary practitioner believes an animal is so severely injured or diseased that it is cruel to keep the animal alive, the practitioner may take possession of the animal and destroy the animal in a manner that does not cause the animal to suffer. The same powers are available to the owner of a saleyard or an abattoir (POCTAA, ss 26AA, 26B). An officer may apply to the court for permission to enter a premises to provide immediate care to an animal in the case of an animal requiring urgent assistance, or in cases where the owner has died or cannot be located (POCTAA, s 29C). The court may order that any animals in the possession of a convicted person be disposed of and that the person is not to acquire more animals for a set time period (POCTAA, s 31). An inspector may serve a penalty notice on a person if the inspector believes the person has committed an offence under POCTAA. This allows a fine to be paid as opposed to the matter being dealt with by the court (POCTAA, s 33E).
Appendix VI: Survey Questionnaire

Survey into attitudes towards the use of animals in research and education

1. Would you describe your level of knowledge concerning the use of animals in education and research to be:
   a) Extensive
   b) Good
   c) Fair
   d) Limited
   e) I know nothing about this issue

2. How have you acquired your level of knowledge about the use of animals in education and research?
   You may tick more than one box.
   a) Personal experience e.g. using animals in research or education yourself
   b) Popular media e.g. TV, film, radio, internet, newspapers
   c) Books or academic journals on the issue
   d) Information distributed by animal welfare/rights organisations
   e) Information distributed by patient or research advocacy groups
   f) I know nothing about this issue

   If you ticked box a) for question 2, please indicate the type/s of personal experience you have had:

   If you ticked box d) for question 2, please indicate the organisation/s through which you received most information e.g. the RSPCA, Humane Society International, International Fund for Animal Welfare, Animal Liberation, the Animal Welfare League or another organisation. Please list the organisations:

3. Please circle either true or false for the following questions. If you do not know the answer to a question just leave it blank:

   a) Animal Research in NSW is regulated by Animal Ethics Committees
   b) You can use a pound dog in research in NSW as long as you have proper approval
   c) Australia has a Code of Practice for animal research but it doesn’t apply in NSW
   d) Analgesic is always used in research where animals may experience pain
   e) Animal researchers are required to show a commitment to the principles of Reduction, Refinement and Replacement (3Rs)
4. Please tick the box which most applies to you:

a) I am very concerned about the use of animals in research and education
b) I am somewhat concerned about the use of animals in research education
c) I am not concerned about the use of animals in research and education
d) I know nothing about the issue

**If you ticked boxes a) or b) for question 4 please answer question 5. Otherwise please go straight to question 6.**

5. Has your concern resulted in you changing your behaviour? [ ] Yes [ ] No

**If you answered YES to question 5, please tick the relevant box/s below. Otherwise go straight to question 6. You may tick more than one box.**

a) I tell my friends and family about animal research
b) I now try to choose ‘cruelty-free’ products
c) I have joined an animal welfare/rights organisation
d) I have written to a politician about the issue
e) I have protested about the issue
f) I joined an Animal Ethics Committee
g) I have stopped using animals in research and education
h) I have altered the way I use animals in research and education
i) Other, please specify: __________________________________________________________

_____________________________________________________________________________

Please complete question 6 and/or question 7. You may tick more than one box. You may tick boxes from both questions 6 and 7 if applicable.

6. I **DO** support the use of animals in research and education because:

a) Animals used in such a way do not suffer
b) Such use is justified by the benefits it brings
c) Such animal use is necessary
d) Any suffering is minimised
e) No effective alternatives are available
f) Modern medicine would not be where it is today if it weren’t for such use
g) The animal research industry is well regulated

7. I **DO NOT** support the use of animals in research and education because:

a) Such use is immoral
b) Such use is unnecessary
c) Animals suffer as a result
d) There are better ways of undertaking research
e) The benefits of such research are overstated
f) Animal researchers are largely unaccountable for their treatment of animals
8. My highest level of education is:

- High school year 10 or equivalent
- High school matriculation
- I have an undergraduate degree
- I have a post graduate degree
- I have a trade certificate

9. I am aged:

- 14 years or under
- 15 – 19 years
- 20 – 29 years
- 30 – 39 years
- 40 – 49 years
- 50 – 59 years
- 60 – 69 years
- 70 + years
**Appendix VII: Survey Results**

1. Self-assessed level of knowledge about the use of animals in research and education

<table>
<thead>
<tr>
<th></th>
<th>Extensive</th>
<th>Good</th>
<th>Fair</th>
<th>Limited</th>
<th>I know nothing about this issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>2.3(^{153})</td>
<td>46.0</td>
<td>29.9</td>
<td>19.5</td>
<td>2.3</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>65.2</td>
<td>26.1</td>
<td>8.7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>8.4</td>
<td>36.6</td>
<td>28.7</td>
<td>25.5</td>
<td>1.2</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>12.3</td>
<td>42.9</td>
<td>34.5</td>
<td>10.3</td>
<td>0</td>
</tr>
</tbody>
</table>

2. How knowledge about the use of animals in research was acquired

<table>
<thead>
<tr>
<th></th>
<th>Personal experience</th>
<th>Popular media</th>
<th>Books or academic journals</th>
<th>Animal welfare/rights organisations</th>
<th>Patient or research advocacy groups</th>
<th>I know nothing about this issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>77.3</td>
<td>47.7</td>
<td>52.3</td>
<td>20.5</td>
<td>9.1</td>
<td>0</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>82.6</td>
<td>13</td>
<td>60.9</td>
<td>43.5</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>17.2</td>
<td>71.1</td>
<td>40.6</td>
<td>93.4</td>
<td>10.5</td>
<td>0.8</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>15.4</td>
<td>62.0</td>
<td>46.2</td>
<td>97.6</td>
<td>11.5</td>
<td>0</td>
</tr>
</tbody>
</table>

\(^{153}\) All results are as a percentage of respondents from within that sample group.
3. Ability to answer true/false questions about the use of animals in research

<table>
<thead>
<tr>
<th></th>
<th>Five Responses Correct</th>
<th>Four Responses Correct</th>
<th>Three Responses Correct</th>
<th>Two Responses Correct</th>
<th>One Responses Correct</th>
<th>No Responses Correct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>15.9</td>
<td>46.6</td>
<td>30.7</td>
<td>3.4</td>
<td>2.3</td>
<td>1.1</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>13</td>
<td>34.8</td>
<td>34.8</td>
<td>8.7</td>
<td>8.7</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>2</td>
<td>8.6</td>
<td>14.8</td>
<td>13.7</td>
<td>25.8</td>
<td>35.2</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>2.9</td>
<td>12</td>
<td>13.5</td>
<td>15.9</td>
<td>30.8</td>
<td>25</td>
</tr>
</tbody>
</table>

4. Level of concern about the use of animals in research

<table>
<thead>
<tr>
<th></th>
<th>I am very concerned</th>
<th>I am somewhat concerned</th>
<th>I am not concerned</th>
<th>I know nothing about the issue</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>31.8</td>
<td>60.2</td>
<td>3.4</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>47.8</td>
<td>39.1</td>
<td>8.7</td>
<td>4.3</td>
<td>0</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>93.8</td>
<td>4.7</td>
<td>0</td>
<td>0.4</td>
<td>1.2</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>93.3</td>
<td>4.3</td>
<td>1</td>
<td>0</td>
<td>1.4</td>
</tr>
</tbody>
</table>

154 Included in this group are people who made no attempt to answer the questions.
5. How has your behaviour changed?

<table>
<thead>
<tr>
<th></th>
<th>Tell friends and family</th>
<th>Choose ‘cruelty free’ products</th>
<th>Join an animal rights/welfare organisation</th>
<th>Written to a politician</th>
<th>Protested</th>
<th>Joined an AEC</th>
<th>Stopped using animals in research</th>
<th>Altered the way I use animals in research</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group One – Animal Researchers</strong></td>
<td>45.5</td>
<td>25</td>
<td>5.7</td>
<td>0</td>
<td>1.1</td>
<td>0</td>
<td>1.1</td>
<td>19.3</td>
</tr>
<tr>
<td><strong>Group Two – Animal Research Support Services</strong></td>
<td>47.8</td>
<td>30.4</td>
<td>0</td>
<td>4.3</td>
<td>0</td>
<td>47.8</td>
<td>4.3</td>
<td>21.7</td>
</tr>
<tr>
<td><strong>Group Three – New Welfare Organisation</strong></td>
<td>73.8</td>
<td>90.6</td>
<td>85.9</td>
<td>62.5</td>
<td>35.2</td>
<td>7</td>
<td>8.2</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Group Four – Animal Rights Organisation</strong></td>
<td>81.7</td>
<td>92.8</td>
<td>90.4</td>
<td>74.5</td>
<td>45.2</td>
<td>2.9</td>
<td>3.4</td>
<td>1</td>
</tr>
</tbody>
</table>

6. I do support the use of animals in research because

<table>
<thead>
<tr>
<th></th>
<th>Animals do not suffer</th>
<th>It is justified by the benefits it brings</th>
<th>It is necessary</th>
<th>Suffering is minimised</th>
<th>No alternatives are available</th>
<th>Modern medicine wouldn’t be where it is today otherwise</th>
<th>Animal research is well regulated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Group One – Animal Researchers</strong></td>
<td>21.6</td>
<td>56.8</td>
<td>33</td>
<td>61.4</td>
<td>30.7</td>
<td>47.7</td>
<td>37.5</td>
</tr>
<tr>
<td><strong>Group Two – Animal Research Support Services</strong></td>
<td>17.4</td>
<td>69.6</td>
<td>56.5</td>
<td>65.2</td>
<td>73.9</td>
<td>69.6</td>
<td>69.6</td>
</tr>
<tr>
<td><strong>Group Three – New Welfare Organisation</strong></td>
<td>0.4</td>
<td>2.7</td>
<td>3.9</td>
<td>1.6</td>
<td>4.3</td>
<td>5.9</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Group Four – Animal Rights Organisation</strong></td>
<td>2.4</td>
<td>1</td>
<td>1.4</td>
<td>1.4</td>
<td>2.4</td>
<td>4.8</td>
<td>1.4</td>
</tr>
</tbody>
</table>
7. I do not support the use of animals in research because

<table>
<thead>
<tr>
<th>Group One – Animal Researchers</th>
<th>It is immoral</th>
<th>It is unnecessary</th>
<th>Animals suffer</th>
<th>There are better ways of researching</th>
<th>The benefits are overstated</th>
<th>Researchers are unaccountable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5.7</td>
<td>8</td>
<td>21.6</td>
<td>20.5</td>
<td>12.5</td>
<td>4.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Group Two – Animal Research Support Services</th>
<th>It is immoral</th>
<th>It is unnecessary</th>
<th>Animals suffer</th>
<th>There are better ways of researching</th>
<th>The benefits are overstated</th>
<th>Researchers are unaccountable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4.3</td>
<td>4.3</td>
<td>4.3</td>
<td>8.7</td>
<td>4.3</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Group Three – New Welfare Organisation</th>
<th>It is immoral</th>
<th>It is unnecessary</th>
<th>Animals suffer</th>
<th>There are better ways of researching</th>
<th>The benefits are overstated</th>
<th>Researchers are unaccountable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>76.6</td>
<td>69.5</td>
<td>91.8</td>
<td>79.7</td>
<td>75.8</td>
<td>80.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Group Four – Animal Rights Organisation</th>
<th>It is immoral</th>
<th>It is unnecessary</th>
<th>Animals suffer</th>
<th>There are better ways of researching</th>
<th>The benefits are overstated</th>
<th>Researchers are unaccountable</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>86.5</td>
<td>86.1</td>
<td>96.6</td>
<td>91.8</td>
<td>87</td>
<td>82.2</td>
</tr>
</tbody>
</table>

8. Highest level of education

<table>
<thead>
<tr>
<th></th>
<th>Year 10 or equivalent\textsuperscript{155}</th>
<th>High school matriculation</th>
<th>Undergraduate degree</th>
<th>Postgraduate degree</th>
<th>Trade certificate</th>
<th>Question not answered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group One – Animal Researchers</td>
<td>0</td>
<td>1.1</td>
<td>72.7</td>
<td>25</td>
<td>1.1</td>
<td>0</td>
</tr>
<tr>
<td>Group Two – Animal Research Support Services</td>
<td>0</td>
<td>4.3</td>
<td>0</td>
<td>73.9</td>
<td>13</td>
<td>8.7</td>
</tr>
<tr>
<td>Group Three – New Welfare Organisation</td>
<td>17.2</td>
<td>17.6</td>
<td>28.5</td>
<td>24.6</td>
<td>9.0</td>
<td>3.1</td>
</tr>
<tr>
<td>Group Four – Animal Rights Organisation</td>
<td>20.7</td>
<td>19.7</td>
<td>21.6</td>
<td>26.9</td>
<td>8.2</td>
<td>2.9</td>
</tr>
</tbody>
</table>

\textsuperscript{155} Australian students complete year 10 when they are 15 to 16 years of age.
9. Age

<table>
<thead>
<tr>
<th>Age Range</th>
<th>Group One – Animal Researchers</th>
<th>Group Two – Animal Research Support Services</th>
<th>Group Three – New Welfare Organisation</th>
<th>Group Four – Animal Rights Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 or under</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>15 – 19</td>
<td>0</td>
<td>0</td>
<td>21.2</td>
<td>0</td>
</tr>
<tr>
<td>20 – 29</td>
<td>85.2</td>
<td>0</td>
<td>27.3</td>
<td>4.3</td>
</tr>
<tr>
<td>30 – 39</td>
<td>8</td>
<td>21.7</td>
<td>20.2</td>
<td>11.1</td>
</tr>
<tr>
<td>40 – 49</td>
<td>5.7</td>
<td>26.1</td>
<td>17.2</td>
<td>18.3</td>
</tr>
<tr>
<td>50 – 59</td>
<td>1.1</td>
<td>34.8</td>
<td>10.6</td>
<td>25</td>
</tr>
<tr>
<td>60 – 69</td>
<td>0</td>
<td>17.4</td>
<td>2.9</td>
<td>20.2</td>
</tr>
<tr>
<td>70+</td>
<td>0</td>
<td>0</td>
<td>0.3</td>
<td>21.2</td>
</tr>
<tr>
<td>Question not answered</td>
<td>0</td>
<td>0</td>
<td>0.2</td>
<td>0</td>
</tr>
</tbody>
</table>

10. State of residence

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>100</td>
<td>13</td>
<td>29.7</td>
<td>64.9</td>
</tr>
<tr>
<td>VIC</td>
<td>0</td>
<td>39.1</td>
<td>32</td>
<td>13</td>
</tr>
<tr>
<td>QLD</td>
<td>0</td>
<td>4.3</td>
<td>9.4</td>
<td>8.2</td>
</tr>
<tr>
<td>TAS</td>
<td>0</td>
<td>13</td>
<td>3.1</td>
<td>2.4</td>
</tr>
<tr>
<td>SA</td>
<td>0</td>
<td>17.4</td>
<td>9.4</td>
<td>1.0</td>
</tr>
<tr>
<td>WA</td>
<td>0</td>
<td>0</td>
<td>10.2</td>
<td>2.9</td>
</tr>
<tr>
<td>NT</td>
<td>0</td>
<td>8.7</td>
<td>1.2</td>
<td>0.5</td>
</tr>
<tr>
<td>ACT</td>
<td>0</td>
<td>4.3</td>
<td>4.3</td>
<td>6.3</td>
</tr>
<tr>
<td>Outside Australia</td>
<td>0</td>
<td>4.3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Question not answered</td>
<td>0</td>
<td>0</td>
<td>0.8</td>
<td>0</td>
</tr>
</tbody>
</table>

156 The states in order are: New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, Northern Territory and Australian Capital Territory.
Bibliography


Animal Liberation NSW, (ndb). Don’t be blinded by the glamour. Information flyer produced in Sydney.


Animal Liberation NSW (angie@animal-lib.org.au), June 2006, communication to members by e-mail. e-mail to O’Sullivan, S. (s.osullivan@econ.usyd.edu.au).


375


Einstein, R. (einstein@med.usyd.edu.au), 20 October, 2006. Re: statistics on the number of animals used for education. E-mail to O’Sullivan, S. (s.osullivan@econ.usyd.edu.au).


HC Deb 2 April 1800 volt33 c202.

HC Deb 15 May 1809 volt14 c562.

HC Deb 31 May 1809 v olt14 c805.

HC Deb 2 June 1809 volt14 cc851-852.

HC Deb 1 June 1821 volt5 c1098.

HC Deb 10 June 1822 volt7 c874.

HC Deb 14 July 1835 volt29 cc537-538.

HC Deb 27 April 1849 volt104 c928.

HC Deb 19 April 1911 volt24 c879 (oral answer).


Lawrie, M (mlawrie@ava.com.au), 17 July, 2004. Re: Police Dogs and Horses. E-mail to O'Sullivan, S. (siobhano_s@hotmail.com).


387


Pearson, M. (alncle@ozemail.com.au), 11 October, 2006. Re: 1800 Number. E-mail to O'Sullivan, S. (siobhano_s@hotmail.com).


Rosser, H. (helenrosser@aahr.org.au), 20 October, 2006. Re: Animal use statistics media release. E-mail to O’Sullivan, S. (siobhano_s@hotmail.com).


Srzhich, P. (Peter.Srzhich@goofauthority.nsw.gov.au), 2 January 2007. Re: Horse meat. E-mail to S. O’Sullivan (s.osullivan@econ.usyd.edu.au).


