

# The fox is in charge of the chickens

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Welfare laws for farm animals are hamstrung by a conflict of interest.

VICTORIA'S animal-protection law largely fails to protect animals. In fact, it institutionalises widespread animal suffering. Why? Because the Prevention of Cruelty to Animals Act 1986, in effect, exempts the overwhelming mass of animals from its protection.

How? By sanctioning "codes of practice" — usually favouring the interests of producers over animal welfare — as a defence or exemption from prosecution under the act.

For example, the Code of Accepted Farming Practice for the welfare of poultry permits the confinement of a battery hen on a floor area about three quarters the size of an A4 sheet of paper. Such enduring close confinement would ordinarily fall within one of the act's cruelty offences.

As such confinement complies with the relevant code of practice, however, the act does not apply.

The act defines a "farm animal" to include "cattle, sheep, pigs, poultry". This means, for example, that intensively confined pigs and poultry may be exempted from the act's reach. Yet this is where acute suffering occurs daily. And in enormous numbers. Contemplate the sow's plight in a gestation stall or farrowing crate — Australia-wide about 300,000 annually. Or the plight of the nation's battery hens — 13 million annually. Or that of broiler hens — 420 million annually.

Suffering is suffering, and does not cease at the borders of human experience. The challenge, then, also lies in the sheer quantity of animal suffering: hundreds of millions of the nation's animals every year. To allay it in Victoria will require the statute's unqualified acknowledgement that animals should be treated humanely.

Who is responsible for initiating and creating these "codes of practice"? In Victoria, it is the Minister for Primary Industries and his department — the very people charged under the act with its administration and enforcement.

Codes are produced by the self-styled "Animal Welfare Committee" within the Australian Primary Industries Council system. Like its federal and other state counterparts, the Victorian Department of Primary Industries is a member of the "Animal Welfare Committee". This "Animal Welfare Committee" produces national model codes. In Victoria, these codes are then incorporated into our animal protection legal regime by the Governor in Council on the recommendation of the Minister for Primary Industries.

The bias of the codes on threshold welfare questions is obvious. Take the model Domestic Poultry Code, 4th edition. Its introduction tritely observes: "It is noted that there are particular behaviours such as perching, the ability to fully stretch and to lay eggs in a nest that are not currently possible in certain (caged) poultry housing systems. It is further noted that the ability to manage disease is

influenced by the housing system. These issues will remain the subject of debate and review."

Matters central to the almost universally acknowledged bleak existence of the battery hen are thus put on hold. Indeed, the preface to the model code notes: "The following Code will be further reviewed in 2010, although an earlier review will be implemented if technologies offering significant welfare benefits are available."

Similar statements appear in the Victorian code published in December 2003.

Meanwhile, Council of Europe conventions and European Union legislation provide ultimately for banning battery hens, and their phasing out in the interim.

In the United States and Canada, each country's largest pork producer has just flagged that it will phase out sow gestation stalls in acknowledgement of public opinion and consumer sentiment. No holding on for significant new technologies or cost savings.

Further, enforcement of what remains of the Victorian act's protective reach is left in substantive respects to the RSPCA, a charity with limited resources. In an age in which individuals may be backed by a producer body or a fighting fund, how can a charity also be expected to risk an adverse costs outcome

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in a difficult or protracted prosecution? Only the state has the resources necessary to enforce a public interest statute, especially such a potentially wide-ranging one. It should do so, but the department's enforcement record is a modest one.

On the detection of offences, the vital power to permit random inspection of premises (such as a battery hen shed) lies tightly controlled by the Minister for Primary Industries or his delegate. This power is exercised sparingly.

Otherwise, for an RSPCA or police inspector to have the necessary "reasonable grounds" to enter premises would need a departing employee to make a complaint (infrequent) or the co-operation of the relevant producer (unlikely).

Inspectors' other powers of inspection are also materially deficient.

If the true scale of animal suffering were to be acknowledged, the ministerial and departmental role since 1980 in subverting the protective reach of the act would connote an abandonment of public responsibility. It is no coincidence that about 1980 the voice of the animal welfare movement began to be heard.

The administration and enforcement of the act should be assigned to the Attorney-General and his department. At least then, the self-evident conflict of interest would cease, and some hope could be kindled of extended animal protection.

For the present, the legal regime is a public scandal. And this affront to the public interest is likely to continue as long as the fox remains in charge of the chickens.

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## Opinion