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Leading the way on animal welfare

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Unlike Australia's major political parties, the legal profession has shown its altruistic side through a willingness to address animal welfare issues. Clare Buttner reports on how the legal profession is pushing for change

Many Australians might think twice about getting some pork on their fork if they saw the conditions pigs were kept in on factory farms. The majority of the 300,000 sows are kept inside sheds, continually pregnant and confined. The RSPCA says that over a quarter of pregnant sows in Australia are confined to metal stalls just 60cm wide and two metres long for the entire 16 weeks of their pregnancy. Conditions are so cramped the sow can't even turn around.

It certainly sounds cruel, yet Australia's agriculture ministers recently gave this practice the green light to continue for the next 10 years. While other industrialised nations are either phasing out this method of pig farming or reducing the amount of time sows are kept in the stalls, Australian farmers will get 10 more years before they have to extend the length of the stall by a paltry 20cm and limit the length of time sows are kept in such cramped conditions to six weeks.

Unfortunately for pigs and other farm animals, animal protection legislation in this country fails to offer farm animals any meaningful protection. Agricultural producers are exempted from prosecution for cruelty to animals in cases involving routine factory farming practices.

Legally, it would very simple to remove these exemptions to prosecution and protect farm animals from suffering of this kind. However, the issue is politically complex and consequently there is a reticence amongst politicians to lead the way on animal welfare law reform.

Despite the low likelihood of any real legislative change in the near future, interest amongst of the legal profession in advancing animal welfare through existing law is gaining momentum.

The Victorian Bar Association recently formed The Barristers Animal Welfare Panel comprising some 90 barristers, including over 20 silks from the commercial and criminal bars. In the six months since its inception, the panel – which receives support from law firm Mallesons Stephen Jaques – has been flat out, according to its chair Graeme McEwan.

"We're already addressing an Australia-wide agenda. First the Federal Department of Agriculture, Fisheries and Forestry approached us to participate in the Australian Animal Welfare Strategy. The strategy is intended to look at ways of harmonising Australian laws on animals and most of the stakeholders are participants.

"Second, we're looking at a number of issues, for example a member of the ACT legislative assembly is introducing a bill to amend the Territory's *Animal Welfare Act* to commence a ban on the keeping of hens in battery cages for egg production in the ACT.

"The question is whether the Commonwealth *Mutual Recognition Act 1992* stands to strike down any such legislation, on the basis that it is contrary to national competition policy principles, in that it would inhibit freedom of movement of goods in a free market in Australia. Two members of the Victorian Bar are to examine the matter urgently," McEwan said.

The panel has also undertaken to engage in public advocacy, rather than be what McEwan calls "just a revolving door for cases." It aims to challenge the existing animal protection legal regime, formulate and prosecute proposals for law reform, promote the teaching of "animal law" as a university subject, and form a secretariat to do research on the issue.

Law firms including DLA Phillips Fox (DLA PF) and Arnold Bloch Leibler (ABL) have also taken an active interest in this area, and begun representing clients that are typically organisations promoting animal welfare.

Nicolas Patrick, national pro-bono director at DLA PF says the firm decided to get involved due to a genuine interest from lawyers at the firm.

"There are some firms that won't take it on, that say their pro bono practice is there solely to help people. The reason we decided to take it on was because there was an organic interest amongst our lawyers and the pro bono program will flourish if people can work on matters that they feel passionate about. And when other firms say their pro bono practice is directed solely at helping people, my response is sort of, well, we aren't taking away from things that help people; we are simply adding to our pro bono practice. It's a new capacity," he says.

DLA PF is currently running approximately a dozen matters, all of which have come in during the last six to eight months. The types of matters are varied. The firm has acted for the Humane Society International in relation to the creation of the "Humane Choice Label" for consumer goods; as well as animal protection organisation Voiceless, in relation to corporate/commercial type matters.

It is currently acting for the Wildlife Protection Association of Australia, an organisation funded by the Irwin

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family, in an appeal against the decision of the federal environment minister to declare the NSW Commercial Kangaroo Harvest Management Plan 2007–2011 an approved wildlife trade management plan. This matter is currently before the Commonwealth Administrative Appeals Tribunal.

"DLA Phillips Fox certainly doesn't have a position on whether Kangaroos should be culled, or the means by which the culling should be undertaken. As with all pro bono work our role is to ensure access to justice, and to ensure that organisations, like the Wildlife Protection Association, are able to have access to competent courts and tribunals," Patrick says.

Similarly lawyers at ABL have found themselves working on a wide range of cases, says public interest law partner, Peter Seidel.

"It's defamation, it's contracts, it's the *Trade Practice Act* and fundraising and the like. It's like environmental law was 30 years ago and it's a real privilege to be part of that push for change," he says.

Seidel predicts that as people become increasingly attuned to the "intrinsic value" in preventing cruelty to animals, it will only be a matter of time before law reform takes place.

"It's part of that mainstream push that we are interested in participating in, as are a lot of other law firms. It's inevitable that animal protection law will become mainstream shortly. There's huge interest amongst university students who themselves are demanding that there be subjects in animal law, and that then manifests in graduates that come to the law firms.

"The law will change and the whole purpose of participating in this type of law at the moment is that it becomes better understood by the system, so legislative and common law change will concentrate on animal law protection," he says.

Seidel hopes that the change will address the false distinction between cruelty to animals as opposed to humans.

"Cruelty is cruelty and suffering is suffering whether it be to humans or animals," he says.

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- [December 2009 \(39\)](#)
- [November 2009 \(65\)](#)
- [October 2009 \(53\)](#)
- [September 2009 \(77\)](#)
- [August 2009 \(114\)](#)
- [July 2009 \(54\)](#)
- [June 2009 \(43\)](#)
- [May 2009 \(64\)](#)
- [April 2009 \(60\)](#)
- [March 2009 \(51\)](#)
- [February 2009 \(23\)](#)
- [January 2009 \(55\)](#)
- [November 2008 \(50\)](#)
- [October 2008 \(49\)](#)
- [September 2008 \(43\)](#)
- [August 2008 \(47\)](#)
- [July 2008 \(43\)](#)
- [June 2008 \(55\)](#)
- [May 2008 \(58\)](#)
- [April 2008 \(38\)](#)
- [March 2008 \(45\)](#)
- [February 2008 \(39\)](#)
- [January 2008 \(43\)](#)
- [December 2007 \(22\)](#)
- [November 2007 \(37\)](#)
- [October 2007 \(31\)](#)
- [September 2007 \(20\)](#)
- [August 2007 \(14\)](#)
- [July 2007 \(54\)](#)
- [June 2007 \(56\)](#)
- [May 2007 \(63\)](#)
- [April 2007 \(44\)](#)
- [March 2007 \(53\)](#)
- [February 2007 \(49\)](#)
- [January 2007 \(27\)](#)
- [December 2006 \(23\)](#)
- [November 2006 \(51\)](#)
- [October 2006 \(49\)](#)
- [September 2006 \(54\)](#)
- [August 2006 \(40\)](#)
- [July 2006 \(25\)](#)
- [June 2006 \(38\)](#)
- [May 2006 \(46\)](#)
- [April 2006 \(35\)](#)
- [March 2006 \(35\)](#)
- [February 2006 \(42\)](#)
- [January 2006 \(30\)](#)
- [December 2005 \(28\)](#)
- [November 2005 \(37\)](#)
- [October 2005 \(41\)](#)
- [September 2005 \(39\)](#)
- [August 2005 \(35\)](#)
- [July 2005 \(44\)](#)
- [June 2005 \(40\)](#)
- [May 2005 \(51\)](#)
- [April 2005 \(48\)](#)
- [March 2005 \(40\)](#)