1 Introduction

Australian animal welfare laws afford some significant protections to so-called 'companion animals'.¹ However, despite the privileged status companion animals² enjoy over other animals under Australian law, these protections remain far from adequate. This critical appraisal of recent RSPCA policy and practice aims to illuminate the shortcomings of the law in providing sufficient protection to the

¹ Many commentators have noted the differential treatment in law that companion animals receive in comparison to farm animals. See, eg, Katrina Sharman, ‘Farm Animals and Welfare Law: An Unhappy Union’ in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 61, 63; Ian Weldon, ‘Why Doesn't Animal Protection Legislation Protect Animals? (And How it's Getting Worse)’, [2008] 1 Animal Protection Law Journal 9, 9. As Barrister Ian Weldon notes, '[t]o keep a dog or cat in conditions which are commonplace for pigs or hens would certainly attract prosecution and public censure': at 9.

² The term 'companion animals' is used in the literature to refer primarily to cats and dogs, but also other species not kept for commercial purposes.
thousands of cats, dogs and other animals that are unnecessarily but legally 'euthanised'\(^3\) by RSPCA annually.

RSPCA policies and ideology that inform its extraordinarily high kill rates are examined, along with the legal and regulatory framework that sanctions the abandonment and extermination of animals, and which sustains their enduring status as disposable property. The assumptions which inform that legal framework are also examined, along with the adequacy of existing NSW anti-cruelty legislation, and RSPCA’s use, and failure to use, such legislation for the advancement of animal welfare. Possible solutions, suggestions and strategies, including legislative reform, are also briefly considered.

2 Context and rationale

The RSPCA is the premier body that enforces anti-cruelty legislation in NSW and other Australian jurisdictions.\(^4\) RSPCA Australia spends more than $80 million annually,\(^5\) exerts a potent influence upon legislators, and enjoys a privileged relationship with industry and government.\(^6\) The public have high expectations regarding welfare outcomes for companion animals. It is clearly vital that RSPCA policy and practice is free of hypocrisy, corruption and inconsistency, and that it reflects the fundamental, original ethic upon which RSPCA was founded - that of caring for 'all creatures great and small'.

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\(^3\) The use of the term euthanasia in this context is ubiquitous in the literature, but not strictly accurate. The Macquarie Dictionary defines euthanasia as '...the deliberate bringing about of the death of a person suffering from an incurable disease or condition.' However thousands of healthy animals that are not suffering any 'disease or condition' at all are killed each year by RSPCA for 'behavioural', legal, financial and pragmatic reasons.


\(^6\) RSPCA regularly advises government on law reform issues and is a regular participant in initiatives such as, for example, the NSW Companion Animals Taskforce. See also, RSPCA How we Govern Ourselves (accessed 18 December 2013) <http://www.rspca.org.au/what-we-do/about-us>.
3 The RSPCA: action and inaction

There is a growing perception that RSPCA condones animal suffering. RSPCA Australia has been widely criticised over its perceived failure to provide adequate protection from cruelty for animals. Critics have condemned RSPCA over such policies and practices as, for example, its; financial business arrangements - receipt of royalties, sponsorship arrangements, etc. - with animal products industries, use of deceptive and misleading conduct in its provision of 'stamps of approval' for certain farming and other practices that involve the use of animals, failure to use the powers it enjoys as a 'charitable organisation' under existing legislation to intervene in cases of severe animal cruelty (to seize neglected animals and bring prosecutions, etc.), and, alternatively, its waste of resources prosecuting marginal and

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10 The Australian public expects bodies charged with the enforcement of animal welfare law such as RSPCA to vigorously prosecute criminal cases of cruelty toward companion animals, but prosecution rates remain very low, with less than 1% of all complaints investigated by SPCA's in Australia and New Zealand resulting in charges being laid, Annabel Markham, 'Animal Cruelty Sentencing in Australia and New Zealand' in, Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 208, 211. The moral legitimacy of the animal welfare legal regime, at least as far as companion animals are concerned, is firmly established in Australian society, Jed Goodfellow, Animal Welfare Law Enforcement: To Punish or Persuade? in Sankoff, White and Black (eds), at 190. Regarding RSPCA's failure to prosecute cases in which a high public expectation that prosecution was urgently warranted, see eg, Noah Hannibal, RSPCA Fails Horses in Need (accessed 29 November 2013) RSPCA Watchdog <http://www.rspcawatchdog.org/articles/tolmiejehorses.htm>; Karen Collier, 'Cruelty Claims in Horse Theft', Herald Sun, (online) 30 August 2006 <http://www.alv.org.au/storyarchive/0609tolmie/tolmie_d.php>; RSPCA Watchdog, What Does the Law Say? (accessed 29 November 2013) <http://www.rspcawatchdog.org/articles/thelaw.htm>; Terra Sword, 'Prosecution Tethered by Ambiguity', Northern Rivers Echo (online), December 8 2011 <http://www.echonews.com.au/news/abuse-prosecution-tethered-by-ambiguity/1200842/>. 
questionable cases that have no reasonable cause or likelihood of success. Other criticisms of RSPCA include its perceived failure to work appropriately with other animal welfare groups, misuse and mismanagement of funds, support of the mass culling of native wildlife, a corporate culture of greed and largess, underpayment of staff, and the manipulation of official data to conceal or ameliorate the true state of affairs regarding the suffering of animals in its shelters.

The most vehement criticism of RSPCA concerns the extra-ordinarily high 'kill rates' of animals in its care, and the related RSPCA 'behaviour assessments' and 'euthanasia allowances.' It is this aspect of RSPCA practice and policy that is the primary focus of this paper.

4 The Legal Framework

RSPCA NSW Inspectors are appointed under state animal welfare legislation. The Prevention of Cruelty to Animals Act 1979 (NSW) (POCTAA) empowers Inspectors to seize animals, issue animal welfare directions/notices and fines, and initiate prosecutions. Whilst Companion animals enjoy significantly more protection under

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11 Accusations that RSPCA pursues cases with little chance of success are less common. As Voiceless lawyer Katrina Sharman notes, a lack of funds available to RSPCA, which essentially remains a charity, renders the organisation reluctant to prosecute marginal and costly test cases, Sharman, 'Farm Animals and Welfare Law', above n 2, 79.


POCTAA than animals in agriculture, the act empowers inspectors to destroy animals in certain circumstances.\textsuperscript{18}

POCTAA makes specific mention of RSPCA as a 'charitable organisation' within its definition.\textsuperscript{19} The Act defines an 'approved charitable organisation' as one approved by the Minister.\textsuperscript{20} RSPCA and the Animal Welfare League are the only approved charitable organisations prescribed by the Minister for Primary Industries that are allowed to appoint inspectors to enforce the provisions of POCTAA.\textsuperscript{21}

Another important statute for the purposes of the present discussion is the Companion Animals Act 1998 (NSW) (CAA). CAA provides for the identification and registration of companion animals, outlines the liabilities, duties and responsibilities of pet owners and councils, and provides for the promotion of responsible care and management of companion animals.\textsuperscript{22} CAA provides for the seizure and impoundment of companion animals under certain circumstances.\textsuperscript{23} The act also sets out the procedures for dealing with seized companion animals, and provides for their sale or destruction by charitable organisations.\textsuperscript{24} CAA provides for the imposition of fees and charges by councils for the maintenance and release of animals in their shelters.\textsuperscript{25}

The accompanying Companion Animals Regulation 2008 (NSW) also contains significant provisions concerning the identification and registration of companion animals.

The Impounding Act 1993 (NSW) sets out the circumstances in which dogs and other animals can be impounded\textsuperscript{26} and who can impound them.\textsuperscript{27} The act provides

\textsuperscript{18} See, eg, POCTAA s 24J (1)(e). S 31A also makes provision for the 'humane destruction' of animals by charitable organisations.
\textsuperscript{19} POCTAA 'definitions'.
\textsuperscript{20} Ibid. See also S 34B, 'Approved charitable organisations'.
\textsuperscript{22} CAA, long title.
\textsuperscript{23} See ss 13(3), 14(3) 18, 22, 30, 32, 36, 52, 57, 57D, 58B, 58G.
\textsuperscript{24} See ss 62A-69, especially ss 63-67.
\textsuperscript{25} S 65.
\textsuperscript{26} See ss 7,9,10,11,12.
\textsuperscript{27} See ss 5(1), 5(2), 5(3).
that an impounding authority may destroy an impounded animal in certain circumstances.\(^{28}\) Also relevant is the present initiative to develop a Code of Practice for council pounds in NSW.\(^{29}\) The code will be consistent with the existing provisions of the *NSW Animal Welfare Code of practice No 5 – 'Dogs and Cats in Animal Boarding Establishments'*.\(^{30}\) The Code will seek to ensure that all reasonable action is taken to reunite animals with their owners, or where relocation occurs, to place animals in safe and caring permanent homes.\(^{31}\)

Finally, two Animal Welfare Codes of Practice are of particular import to the present discussion; *Breeding Dogs and Cats*,\(^{32}\) and *Animals in Pet Shops*.\(^{33}\) The Code pertaining to animals in pet shops identifies legally enforceable standards and best practice guidelines for animal retailers in NSW.\(^{34}\) The code sets standards for the provision of information regarding the legal requirements for pet ownership, and the desirability and advantages of desexing animals.\(^{35}\)

Other statutes also contain provisions that are relevant to the present discussion, notably the *Crimes Act 1900* (NSW).\(^{36}\)

5 RSPCA Kill Rates: 'Convenience killing' or necessity?

RSPCA Australia’s own statistics for the years 2011-2012 reveal the appalling kill rates of animals received nationally by the organisation. 14,211 dogs (25.6% of total dogs), 24,651 cats (47.1% of total cats) and 10,826 of of ‘other animals’ (45.8% of

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28 See ss 22, 41.
31 Schillmoller and Hall, above n 30.
34 Ibid.
35 Ibid.
36 See particularly s 530, 'Serious animal cruelty'.
total 'other animals') were 'euthanised'.\(^{37}\) Most alarmingly, 8,734 dogs and 9,637 cats were 'euthanised' for 'behavioural problems',\(^{38}\) that is, the animals were healthy, but deemed inappropriate for adoption upon the basis of widely condemned and grossly flawed RSPCA temperament or behavioural assessments. During this period RSPCA NSW killed a total of 3,013 dogs and 2,898 cats for 'behavioural reasons'.\(^{39}\)

The 'kill rates' of companion animals in the care of RSPCA has been widely condemned.\(^{40}\) Despite being by far the best resourced animal welfare and rescue organisation, RSPCA kill rates dwarf those of other welfare groups and non aligned local council pounds.

RSPCA has itself acknowledged that its kill rates are unacceptably high.\(^{41}\) but remains unwilling to implement legal and other strategies that other animal welfare groups have successfully employed to reduce kill rates of shelter animals. Moreover,


\(^{38}\) RSPCA Above n 38, Table 3: 'Reasons for euthanasia of dogs and cats by each state and territory'.

\(^{39}\) Ibid.


RSPCA appears reluctant to collaborate, liaise and communicate meaningfully and openly with other welfare groups to reduce its kill rates, and often exhibits a dogmatic and myopic refusal to release animals to the care of willing rescue groups who have better options than euthanasia for the animals.\(^{42}\)

Obtaining access to animals helps reduce kill rates dramatically, but RSPCA routinely denies access to rescue groups of seized animals. Secrecy and deception in its interactions with the public and other animal rescue groups are common criticisms of RSPCA.\(^{43}\)

Many claim that RSPCA privileges younger animals and those breeds that it believes will be easier to sell and re-house.\(^{44}\)

6 Animal Temperament Testing

There has been widespread criticism of the so-called RSPCA 'temperament tests' or 'behavioural assessments' used to decide whether dogs and cats are re-homed or killed.\(^{45}\) The temperament test scores dogs negatively for exhibiting behaviours such as barking, backing away, trembling or jumping.\(^{46}\) Growling or biting on approach attracts an immediate fail.\(^{47}\) However, most animals in the stressful and alien environment of a shelter are very likely to display 'abnormal' behaviours such as excessive barking, trembling, becoming startled at sudden noises, and aggression. Animals that fail the temperament test are put down.

Nathan Barnes, a former RSPCA employee and animal behaviour expert who says he helped devise the RSPCA temperament test is now scathingly critical of it, and claims the tests are being used incorrectly;

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\(^{42}\) SBS Insight, above n 15.

\(^{43}\) Ibid.

\(^{44}\) See, eg, Mark M Aldridge, RSPCA, Do They Protect Animals in Need? (accessed 20 December 2013) Australian Alliance <http://www.markmaldridge.com/RSPCA-----SOME-TRUTH.html>.


...the dogs are failing because ...they've got such a high level of stress they are not reacting normally...if a dog lunges or growls... if it's reactive, if it hesitates at a small noise...refuses to come...reacts negatively to food..."^{48}

7 Funding issues

Principal of Lawyers for Companion Animals, Anne Greenaway, believes RSPCA policy and practice is informed by a perverse bid to monopolise scarce funding and public donations, and an unconscionable determination to save money at the expense of animals in their care;

'It's a lack of proactive measures to try to save animals, rather than put in the monumental effort that rescue groups do, the RSPCA appears to find it...more cost effective... to kill [them]..."^{49}

Animal ethicist Tony Bogdanoski asserts that;

'those advocating a 'no kill' approach to SPCAs and other animal shelters also need to propose how this can be achieved in light of funding problems to these shelters, which are essentially charities'.^{50}

A zero rate of euthanasia may well be impossible to achieve for any welfare organisation. However, we need not agonise about how a significant reduction in kill rates at RSPCA shelters might be achieved. Many smaller rescue groups manage to achieve infinitely better rehabilitation, adoption and re-homing rates than RSPCA, providing admirable examples that could be followed.

^{48} Insight SBS, above n 15. Monash University research casts further doubt on the integrity of temperament testing, finding almost one-quarter of shelter staff who conducted the assessments received no formal training in them, and only 56 per cent believed they were given enough time to assess behaviour. Hasham, ibid.

There is no uniform temperament test. Steve Coleman from RSPCA NSW defended the temperament test and provided an explanation of it; ‘...dogs are assessed in terms of...whether or not they are food aggressive (food guarding), whether or not they react to strangers, whether or not they react to other dogs...different environmental conditions...' Ibid.

^{49} Hasham, above n 48.

^{50} Tony Bogdanoski, 'A Companion Animal's Worth: The Only 'Family Member' Still Regarded as Legal Property', in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 84, 99.
8 Reform: Ideas and Solutions

I see merit in a legal guardianship model similar to that proposed by Joyce Tischler,51 or the equitable self-ownership model offered by David Favre52 and endorsed by Tony Bogdanoski and others. Under such a model the law would recast human 'owners' as 'guardians' in a fiduciary relationship with their animal companions with enforceable obligations, something akin to the custodial relationship of human parents to their human children.53 Certainly, abandonment rates will diminish if legal sanctions were imposed for relinquishing companion animals.54 However, as Bogdanoski notes, offences already exist in Australian jurisdictions for an owner who abandons or deserts an animal.55 But the provisions can be bypassed by an owner simply ceding ownership to a pound or shelter (lawful abandonment).56

In discussing possible reform options, we need not attempt to 'reinvent the wheel'. In 2011 the Minister for Local Government and the Minister for Primary Industries established The NSW Companion Animals Taskforce (CAT) and commissioned a report (CATR).57 Many of the 22 recommendations included in the report contain strategies which, if implemented, would greatly reduce rates of companion animal

53 Bogdanoski, above n 51, 101, 103.
54 Ibid, 101.
55 See, eg, POCTAA s 11.
56 Bogdanoski, above n 51, 101.
impoundment and euthanasia. Indeed, reducing kill rates was the primary objective of the Taskforce.58

My following recommendations to reduce kill rates derive considerable impetus from those made by the NSW Companion Animals Taskforce.59

(a) The over-supply of companion animals must be arrested. Some breeders engage in over-breeding and fail to comply with micro-chipping and registration requirements. Not all states require breeding licences, including NSW. A statutory breeder licensing system with minimum mandatory information requirements that includes the compulsory registration of all animal breeders should be established under POCTAA.60 'The Companion Animals Register should be updated to capture breeder licence information for each animal record'.61 So-called ‘puppy farmers’ could thus be better identified and located, and their activities controlled to comply with standards set out in the Breeder Code.62

Puppy and kitten farms could be outlawed.63 Consideration should be given to the banning of the sale of cats and dogs in pet shops, markets and fairs, or at least the banning of their display in order to help prevent impulse buying.64 My recommendations here go significantly further than those contained in the CATR,65 and I accept they are controversial and arguably too wide in scope. At the very least, an animal’s microchip number, or the licence number of the breeder, should be

58 Companion Animals Taskforce, Executive Summary, Companion Animals Taskforce Report (CATR).
59 My list of recommendations is not intended to be exhaustive. Within the confines of this brief paper, these recommendations must remain general in nature.
60 See Recommendation 1, CATR. The Greens have also proposed such an initiative, (see, n 65 below). An initiative to introduce mandatory registration of all animal breeders was rejected by the Queensland Government. See, eg, Kate Clifford ‘Puppy Farms off Leash as Government Dismisses Legislation, Sunshine Coast Daily (Online) 8 November 2012 <http://www.sunshinecoastdaily.com.au/news/puppy-farms-off-leash-legislation/1614196/>
61 Recommendation 1 NSW Companion Animals Taskforce.
62 See, Recommendation 1, CATR.
64 A Bill similar to that introduced by independent Clover Moore, the Animals (Regulation of Sale) Bill 2008 (NSW) should be reconsidered. There is merit in such provisions as were contained in Clover Moore’s defeated bill, which included the banning of the sale of cats and dogs in pet shops and markets.
65 Greens representative Cate Faehrmann has recently attempted to reinvigorate the debate, arguing that only two sources of supply of cats and dogs should be available: registered points of sale and registered owners and breeders. NSW, Parliamentary Debates, Legislative Council, 19 September 2012, ADJ Puppy Farms (Cate Faehrmann). New South Wales Parliament.
66 See, eg, Recommendation 2, CATR.
displayed at point of sale to ensure compliance with micro-chipping requirements and easy identification of unethical breeders. Incentives should be provided to those who adopt animals from shelters, rather than purchasing them from pet shops and puppy farms.

A standardised information sheet should be issued to support the requirement in the two relevant Animal Welfare Codes of Practice that information concerning the care of animals be provided at point of sale.

Related to this proposal, a socially-responsible pet ownership education campaign should be developed that emphasises the importance of registration and desexing.

CAT acknowledges the contentious nature of its 8th recommendation, which calls for the replacement of the existing lifetime registration provision under CAA with an annual registration regime for cats and dogs. However, the Taskforce insists the recommendation is a key component of its whole strategy. Whilst noting the concerns of CAT about the supposed shortcomings of lifetime registration, lifetime registration has contributed to the steady increase in registration numbers since 2001, and annual registration would be immensely unpopular with the public. For these reasons I recommend the retention of lifetime registration.

The government should fund the introduction of a standardised low-cost desexing capacity readily available to all owner/guardians of cats and dogs. Further, 'Cat and dog registration fees should be reviewed and set at such a level to provide an additional incentive for owners to de-sex their animals'.

(b) The determination of Australasian legislatures to continue to outsource responsibility for criminal law enforcement of anti-cruelty legislation to private charities has been identified as a significant obstacle to achieving improvements in

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66 Recommendation 3, CATR. See also Recommendation 4 CATR.
68 Recommendations 5 and 6, CATR.
69 See recommendations 5, 6, 15, 16, 17, CATR.
70 Annual registration of dogs was mandatory under the Dogs Act 1966 (NSW) until 1998 when CAA commenced.
71 CATR, Executive Summary.
72 Faehrmann, above n 65. This proposal is consistent with Recommendation 13 of CATR.
73 CATR, Recommendation 9.
animal welfare outcomes.\textsuperscript{74} Government should assume responsibility for the enforcement of a criminal statute. Outsourcing of this task to private charities appears unique to the field of animal welfare.\textsuperscript{75} Charities lack the necessary resources to effectively undertake this task, and the high costs of caring for and attempting to re-home impounded animals contributes to euthanasia rates.

(c) CAA obliges councils to seek alternatives to euthanasia for impounded cats and dogs.\textsuperscript{76} However, councils are independent statutory bodies, and it is for each of them to determine their impounding procedures. Recommendation 19 of CATR contains proposals which are especially relevant to addressing high kill rates. The standardisation of impounding practices is a vital imperative to help reduce abandonment and euthanasia rates. Better practice guidelines issued to councils that encourage them to enter into regional arrangements with animal welfare and rescue organisations for the purposes of re-homing impounded cats and dogs are needed. Ensuring that pounds are accessible to the public is, as CATR recommends, also essential.\textsuperscript{77}

A significant number of submissions concerning Recommendation 19 CATR suggested that certain conditions should be imposed on councils with regard to the operation of their pounds.\textsuperscript{78} Particularly, the mandatory adoption of ‘Getting to Zero’ or ‘No-kill’ policies were advocated.\textsuperscript{79} I wholeheartedly support the tenor of such submissions.

Just as pounds must be encouraged to collaborate with animal welfare and rescue organisations, RSPCA must improve its relations with other rescue groups, and be prepared to liaise and collaborate with them. Rescue groups who approach RSPCA about specific individual animals in good physical health should be permitted to take them in appropriate circumstances if their facilities and record of care are adequate. Legislative reform may be required to compel RSPCA to release healthy animals to

\textsuperscript{74} As animal law expert Elizabeth Ellis notes, ‘Australasian governments in the 21st century continue to delegate much of this quintessentially public function to animal welfare bodies, principally the RSPCA.’ Elizabeth Ellis, ‘The Animal Welfare Trade-off or Trading Off Animal Welfare?’, in Peter Sankoff, Steven White and Celeste Black (eds), \textit{Animal Law in Australasia} (Federation Press, 2\textsuperscript{nd} ed, 2013) 344, 353.
\textsuperscript{75} Ibid.
\textsuperscript{76} \textit{CAA} s 64A(2).
\textsuperscript{77} Recommendation 19, CATR.
\textsuperscript{78} CATR, 30.
\textsuperscript{79} CATR, 30.
groups which enjoy good welfare outcomes for impounded animals where appropriate.

Animal welfare legislation must be reformed to reward and empower groups who manage to achieve low or zero euthanasia rates, whilst penalising those with high kill rates. Councils should cancel existing contracts, and not establish or renew contracts with RSPCA and other welfare groups if they cannot achieve and maintain low kill rates.

(d) Government funding to animal welfare organisations should be increased significantly. The distribution of that funding should be determined by a group's record in achieving good animal welfare outcomes, its use of resources, its euthanasia rates and overall performance, rather than by any privileged status or historical relationship with government.

(e) Consideration should be given to the establishment of an investigating pet ombudsman.80

(f) Residential tenancy laws should be reformed to increase the prevalence of more pet friendly landlords.81 The provision of 'Pet bonds' that landlords could impose should be considered.

(g) Volunteer networks should be established to improve re-homing and rehabilitation rates.

(h) More lawyers should consider offering their services pro bono in advocating for animals. Dedicated organisations of lawyers already provide such services. For example, Lawyers for Companion Animals provide pro bono services for pursuing 'cruelty complaints where it is alleged the RSPCA has refused to act or allegedly failed to take appropriate action… [and where]… pounds or shelters breach Acts or Codes of Practice with regards to the care of impounded cats and dogs.'82

81 See recommendation 21 CATR.
(i) Veterinarians should consider conscientiously refusing to perform euthanasia on healthy animals.  

(j) The NSW greens have proposed the development of a socially responsible pet ownership education program that emphasises the value of pet adoption and responsible pet ownership. Such an initiative should be embraced by government.

(k) A one-stop registration and micro-chipping system must be developed and participating veterinarians and organisations must be reimbursed.

(l) The RSPCA derives a commercial advantage from lending its stamp of approval to animal products businesses. For example, RSPCA charges producers 2% of products sold to use their logos under its Approved Farming Standards (Paw of Approval) scheme. Widespread public concerns about high stocking densities and other questionable farming practices with respect to RSPCA approval logos is exemplified in the often massive number of submissions to the Australian Competition and Consumer Commission (ACCC) opposing such arrangements. RSPCA lends its stamp of approval to businesses that maintain such concentrations of farmed animals that the public would never consider to be 'free range', undermining the ability of consumers to make informed choices. The Department of Primary Industries’ view of itself as a 'friend' of industry constitutes another profound conflict of interest. The DPI Minister enjoys

83 POCTAA S 26AA(1)(e) empowers veterinary practitioners to destroy animals in certain circumstances.
84 Faehrmann, Hansard, above n 65.
85 Ibid.
87 See, eg, ACCC’s rejection of an application by the Australian Egg Corporation relating to a free-range certification trademark (ibid). More than 1700 submissions opposed the application, and only 7 supported it. (Ibid).
88 Greenaway, ibid. Dale and White have drawn attention to the fact that it is those with mercantile interests in animals are typically those most influential in creating and enforcing animal welfare law, and in deciding what is necessary and unnecessary in the treatment of animals, Arnja Dale and Steven White, 'Codifying Animal Welfare Standards: Foundations for Better Animal Protection or Merely a Façade?' in, Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 151, 166-67. See also Arnja Dale, ‘Animal Welfare Codes and Regulations – The Devil in Disguise?’ in Sankoff, Peter, and Steven White (eds), Animal Law in Australasia (Federation Press, 2009), 174.
enforcement powers under *POCTAA*. Under the Act, certain farming methods are exempt.89

The public must be better informed of actual stocking densities and living conditions of animals. Consumer protection law should be invoked to challenge RSPCA and its animal products industry allies for false and misleading advertising/labelling when and where breaches are apparent, and in order to promote truth in labelling of animal products generally.90

(m) Owner-guardians should fund animals' boarding at shelters until they are adopted and rehoused.91

(n) Despite issues of underfunding at RSPCA and other welfare shelters, urgent reform of legislation that provides for the destruction of unclaimed, seized or surrendered animals is required. Specifically, specified time periods after which animals may be destroyed remain too short.92

(o) More broadly, a fundamental change in the legal status of animals from articles of property to right bearing subjects is urgently required, along with a radical rethinking of the welfare model that seeks to justify and provide legal sanction for the 'necessary and reasonable' infliction of pain and suffering upon animals.

9 Conclusion

It would be easy to condemn RSPCA for its high kill rates and other failings identified in this paper. However, reform of RSPCA policy and practice alone is insufficient. RSPCA kill rates are a symptom of more basic assumptions, and of a more elemental prevailing ideology. This ideology and attitude is informed and sustained by a liberalist legal framework that continues to define animals in proprietary terms, fostering public perceptions of animals as expendable articles of property that can be

89 Ibid.
90 For example, Animal Liberation Victoria has recently lodged a complaint to the ACCC against Steggles for allegedly attempting to mislead the public about the free range status of chickens on its farms, Animal Liberation Victoria, *Stegglers: Steggers For Cruelty* (accessed 04 January 2014) <http://www.rspcawatchdog.org/articles/rspca-paw-of-approval.htm>. Greens MP Dr John Kaye attempted to introduce a bill into the NSW parliament concerning truth in labelling but it was defeated.91 Bogdanoski, above n 51, 102.
92 See, eg, CAA ss 64 (1), 64 (2). On the issue of procedures for dealing with seized animals, destruction of animals, time limits, etc. see, eg, *Kliwer v Coffs Harbour City Council* [2003] NSWCA 637. For an example of euthanasia prompted by the so-called 28 day rule. See, eg, Wingate-Pearse above n 41.
enjoyed for a time and discarded at will.\textsuperscript{93} Whilst such an ideology persists in the popular consciousness and continues to find support in animal welfare legislation, animals will continue to be commodified as disposable assets and abandoned in vast numbers. The issues this paper has discussed concerning RSPCA failings in general, and its high kill rates in particular, at least now feature prominently in the national media where they are regularly debated. The debate must continue, and it must include legislators.\textsuperscript{94}

The preoccupation of liberal philosophy with proprietary interests continues to sanction the widespread exploitation of animals provided they are treated 'humanely'.\textsuperscript{95} The existing legislative and regulatory regime in Australia continues to derive its legitimacy from the animal welfare model.\textsuperscript{96} RSPCA policy and practice tends to constitute a ringing endorsement of this paradigm, and tends to be characterised by the same 'moral schizophrenia' identified by Gary Francione in his forceful condemnation of the 'animals as property paradigm', in which the imposition of suffering upon animals by humans is regarded as necessary whenever it benefits property owners.\textsuperscript{97}

Scholarly critiques of the animal welfare model and utilitarian calculus abound. But a radical rethinking of the 'animals as property' paradigm, and of our treatment of animals in general, has now entered the popular imagination too. And the language of this new and timely zeitgeist is that of 'animal rights', and it is fast replacing the old talk of 'humane treatment' and 'animal welfare'.\textsuperscript{98} It is my hope that legislators will increasingly embrace this new zeitgeist and come to afford companion, farm and other animals the rights they deserve.

\textsuperscript{93} The common law defines companion and farm animals as personal property. For a discussion of the property status of animals at law, see, eg, Peter Sankoff, 'The Protection Paradigm: Making the World a Better Place for Animals?', in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2\textsuperscript{nd} ed, 2013) 1-30; Bogdanoski, 'A Companion Animal's Worth', above n, 51; Steven White, 'Exploring Different Philosophical Approaches to Animal Protection in Law', in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2\textsuperscript{nd} ed, 2013) 31-60.


\textsuperscript{95} Ellis, above n 75, 344-45.

\textsuperscript{96} Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2009), 128.


\textsuperscript{98} Deidre Bourke, 'The Use and Misuse of 'Rights Talk' by the Animal Rights Movement', in Peter Sankoff and Steven White (eds), Animal Law in Australasia (Federation Press, 2009), 128.
Bibliography

Articles/Books/Reports


ABC Radio National, 'RSPCA Lends Rare Support to Feral Animal Cull' *PM*, 4 November 2013 (Caitlan Gribbin)
<http://www.abc.net.au/pm/content/2013/s3883788.htm>


Bourke, Deidre, ‘The Use and Misuse of ‘Rights Talk’ by the Animal Rights Movement’, in Sankoff, Peter, and Steven White (eds), Animal Law in Australasia (Federation Press, 2009), 128


Craven, Nick and Lynne Wallis, 'Revealed: RSPCA Destroys HALF of the Animals that it Rescues -Yet Thousands are Completely Healthy' Mail Online (online) <http://www.dailymail.co.uk/news/article-2254729/RSPCA-destroys-HALF-animals-rescues—thousands-completely-healthy.html>


Dale, Arnja, ‘Animal Welfare Codes and Regulations – The Devil in Disguise?’, in Peter Sankoff and Steven White (eds), Animal Law in Australasia (Federation Press, 2009), 174


Department of Premier and Cabinet, Division of Local Government (2012) New South Wales Companion Animals Task force Report to the Minister for Local Government and the Minister for Primary Industries


Ellis, Elizabeth, ‘Collaborative Advocacy: Framing the Interests of Animals as a Social Justice Concern’, in Peter Sankoff and Steven White (eds), Animal Law in Australasia (Federation Press, 2009), 354


Goodfellow, Jed, 'Animal Welfare Law Enforcement: To Punish or Persuade?', in Peter Sankoff, Steven White and Celeste Black (eds.) Animal Law in Australasia (Federation Press, 2nd ed.) 2013, 183


Hannibal, Noah, RSPCA Fails Horses in Need (accessed 29 November 2013) RSPCA Watchdog <http://www.rspcawatchdog.org/articles/tolmiehorses.htm>


Mark, Patty, and Erik Gorton, What’s Wrong with the RSPCA? (accessed 12 December 2013) RSPCA Watchdog <http://www.rspcawatchdog.org/newsarchive.htm>

Markham, Annabel, ‘Animal Cruelty Sentencing in Australia and New Zealand’ in, Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 208


Petrie, Lesley-Anne, ‘Companion Animals: Valuation and treatment in Human Society, in Peter Sankoff and Steven White (eds), *Animal Law in Australasia* (Federation Press, 2009) 57


RSPCA Watchdog, RSPCA CEO (NSW) Approves Killing of 145,000 Kangaroos (accessed 06 December 2013) <http://www.rspcawatchdog.org/mailbag/mail_09-06-01_01.htm>


Sankoff, Peter, Steven White and Celeste Black (eds), *Animal Law in Australasia* (Federation Press, 2nd ed, 2013)
Sankoff, Peter, and Steven White (eds), *Animal Law in Australasia* (Federation Press, 2009)

Sankoff, Peter, ‘The Protection Paradigm: Making the World a Better Place for Animals?’, in Peter Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia* (Federation Press, 2nd ed, 2013) 1

Sankoff, Steven White and Celeste Black (eds), *Animal Law in Australasia* (Federation Press, 2nd ed, 2013) 1


Saving Pets, *There is No Death Row at the RSPCA* (8 May 2013) <http://www.savingpets.com.au/2013/05/there-is-no-death-row-at-the-rspca/>


Schillmoller, Anne, and Amber Hall, 'LAW 10487 Animal Law Study Guide', *Southern Cross University* (2nd ed.) 2013


Smyth, Georgina, 'Former RSPCA Employee Calls for Animal Welfare Ombudsman', *NBN News* (online) 25 September 2013


Walkden-Brown, Jackson, ‘Animals and Entertainment’, in, Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 129

Weisbrot, David, ‘Foreword’, in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013)


White, Steven, ‘Exploring Different Philosophical Approaches to Animal Protection in Law’, in Peter Sankoff, Steven White and Celeste Black (eds), Animal Law in Australasia (Federation Press, 2nd ed, 2013) 31


Zappavigna, Adrianna, 'Euthanasia Rates Remain High in Australian Animal Shelters,' Reportage: Magazine of the Australian Centre for Independent Journalism (online), 15 August 2013
Cases

Klewer v Coffs Harbour City Council [2003] NSWCA 637

Legislation

Animals Act 1998 (NSW)

Animals (Regulation of Sale) Bill 2008 (NSW)

Companion Animals Act 1998 (NSW)

Companion Animals Regulation 2008 (NSW)

Criminal Code 1900 (NSW)

Dogs Act 1966 (NSW)

Impounding Act 1993 (NSW)

New South Wales Animal Welfare Code of Practice: Animals in Pet Shops

New South Wales Animal Welfare Code of Practice: Breeding Dogs and Cats

NSW Animal Welfare Code of Practice No 5 – ‘Dogs and Cats in Animal Boarding Establishments

Prevention of Cruelty to Animals Act 1979 (NSW)

Prevention of Cruelty to Animals (General) Regulation 2012 (NSW)

Other