

# the Animal Rights Legal Advocacy Network Newsletter

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## SCIENTIFIC FACT VS. LEGAL FICTION: NSW FORUM MAKES THE NEW CASE FOR ANIMAL RIGHTS

*by Katrina Sharman*

On 26 May 2003, a diverse group of people braved the rain and wind-swept streets of Sydney, to attend Australia's first public forum on the legal status of nonhuman animals. The purpose of the forum – hosted by NSW Young Lawyers Animal Rights Committee – was to discuss whether the legal status of nonhuman animals should be reevaluated on the basis of scientific knowledge about animals' abilities and intelligence.

For people like myself, the recognition of animal law as a legitimate legal discipline has been a long time coming. It is now more than 30 years since Peter Singer coined the term 'animal liberation' and during that time a healthy and dynamic animal rights movement has grown up around Singer's philosophies. Still, the debate about legal protections for nonhuman animals, at least amongst legal practitioners and legal academics in Australia and New Zealand, unfortunately remains in a nascent stage of development.

While animal activists have been conscious of the legal status of nonhuman animals for many years and have fought hard to promote their welfare and rights within the existing legislative system, the emergence of lawyers into this movement has been slow. As I said during my opening remarks at the forum, this was the first time on this side of the Pacific that lawyers and scientists have come together to put the legal status of nonhuman animals in the spotlight. The first time that a community of diverse interests has come together to ask the hard questions about why the legal system, in an enlightened age, still treats nonhuman animals as 'things' - with the consequential effect that their most basic and fundamental interests are denied.

While the animal law stage in Australia remains largely unclaimed, the NSW Young Lawyers Animal Rights Committee was fortunate enough to gather a number of distinguished academics to facilitate discussion at the forum. The line-up included world-renowned animal behaviorists Professor Lesley Rogers and Professor Gisela Kaplan, who are the only Australian team to have studied the great apes in Borneo. The legal case for casting **[Continued on page 2]**



**NSW Young Lawyers Animal Rights Committee Chair Katrina Sharman, and ARLAN Executive Committee Co-Chair Peter Sankoff at the Forum.**

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## **NSW LEGAL FORUM EXPLORES LEGAL AND SCIENTIFIC BASIS FOR ANIMAL RIGHTS**

for casting off nonhuman animals' status as property was convincingly presented by Peter Sankoff, a lecturer at the University of Auckland and an Executive Member of the Animal Rights Law & Advocacy Network in New Zealand.

### **'More than empty minds'**

The forum began with the two scientists taking the audience on a fascinating journey through scientific history, which evidences our increasing awareness about the intelligence and abilities of nonhuman animals. Professor Rogers, who is a Professor of Neuroscience and Animal Behaviour at the University of New England, identified a number of characteristics, which have traditionally been used to distinguish humans from nonhuman animals. Many of these characteristics, which include brain size, brain lateralization, bipedalism, language, tool use, culture, intellect and awareness/consciousness, have now been identified in nonhuman animals.

For example, Rogers pointed out that nonhuman animals ranging from bonobos to chickens have been shown to possess very complex communicative capabilities. Chimpanzees, cotton-topped tamarins, pigeons and the European magpie have all been tested and 'passed' Gallup's 'spot test', suggesting that they can identify their own image in a mirror. A number of species have also been shown to engage in acts of deception, mocking hurt or fear to obtain food or escape their predators.

Rogers then "de-bunked" historically accepted scientific research that was utilized to justify the claim that animals were mentally insignificant, and consequently, legally insignificant. Traditionally, brain size, and in particular, the ratio of brain size to body weight as well as the related encephalisation quotient has been used as an indicator of cognitive capacity. Rogers clarified that the encephalisation quotient is a crude way of looking at capacity because it overlooks the importance of the way the brain is 'wired.' This is particularly evident when one examines the cognitive capacity of birds. By way of example, Rogers pointed to a rotation task taken from an IQ test for humans, carried out by Professor Juan Delius, in which pigeons were able to perform better than humans. Similarly, Rogers said, Professor Vallortigara has shown that young chickens are able to mentally complete 'pieces of images' which most children cannot do until they are several months old. **[Continued on page 3]**

## MAKING THE CASE FOR ANIMAL RIGHTS

[Continued from page 2]

Professor Gisela Kaplan was next to take the stand. Kaplan, a research professor at the University of New England in Biological Sciences and Education, delivered a convincing, thought-provoking and challenging presentation. Much of Kaplan's presentation stemmed from years of extensive research studying orangutans in Borneo. She was quick to point out that up until about 40 years ago, primates were used and abused without sanction because they were not viewed as sentient beings. Nowadays primates, and especially the great apes, are viewed as entities that must be taken more seriously. However, as Kaplan pointed out, our 'relatedness' is a double-edged sword as the more 'like us' they are, the more likely they are to end up on the researchers' table.



Who's lacking in sentience?

Kaplan's presentation was peppered with effective anecdotes, demonstrating relatedness between humans and nonhuman animals. Importantly, Kaplan explained how her own studies of orangutans, literally meaning '*man of the forest*', had disproved the widely accepted view that humans are the only species able to show the whites of their eyes, indicative of eye gaze. This failed attempt at demonstrating human uniqueness points to the fallacy of the notion that humans are unique in all respects. Kaplan's message was that such notions must be debunked as they are '*the root cause of our lack of respect and abuse of animals.*'

Whilst Kaplan relayed remarkable stories about walking hand-in-hand in the forest with orangutans, the most memorable tale must be that of Julie, an orangutan who, having experienced life at a rehabilitation center, demonstrated a continued unwillingness to return to her natural habitat. According to Kaplan, on one occasion, having been taken deep into the forest, she found her way back to a bus stop. When the bus came, she politely boarded and sat with one leg crossed over the other until the bus reached the rehabilitation center, at which point she alighted, having arrived 'home'. Whilst this anecdote may seem somewhat far-fetched, Kaplan swears it is true and that it is illustrative of an orangutan's abilities to assume human characteristics.

Whilst Kaplan showed a clear interest in elevating the legal status of great apes, she emphasised that such reforms must be viewed as a starting point for other nonhuman animals. Equally worthy of study and legal protection, according to Kaplan, are the lives of birds. As she stated:

'We have so little knowledge of the natural world... We have tested so few species yet we have formed views on all the living extant species as if we knew them... The few things that we have done show that there is awareness, there is consciousness and animals that are meant to have empty minds and no cognition can in fact do very complex things.' **[Continued on page 41]**

## MAKING THE CASE FOR ANIMAL RIGHTS

[Continued from page 3]

Kaplan's studies of birds, and her own experience, (she operates a wildlife rehabilitation centre,) clearly demonstrate that birds have minds and complex communication systems. The greatest obstacle for birds, according to Kaplan, is that they do not look like us. This results in many people viewing them as 'ornaments' instead of making an effort to understand their complexities.

In closing, Kaplan challenged each member of the audience to remember that "human privilege is not an immutable law but a cultural choice and therefore one that we can change if we wish." Were such concepts to be embraced, we might well expect a paradigm shift in our treatment of nonhuman animals both in the natural and the human world.

"Human privilege is not an immutable law but a cultural choice and therefore one we can change if we wish."

–Professor Gisela Kaplan

**'The law ultimately exposes irrational distinctions for what they are'**

Peter Sankoff spoke next and attempted to show the importance of this scientific advancement for the law. He recognized, however, that movement in legal circles will take time. Sankoff admits that at times, when one considers the effect of animals' entrenched status as property and the magnitude of the killing that exists, the debate appears pointless. However he draws his inspiration from lessons of the past and the fact that 'the law ultimately exposes irrational distinctions for what they are'. After all, almost 150 years ago, slaves

possessed no political or social rights. They were effectively treated as items of property, a notion that the world's courts have long since abandoned.

According to Sankoff, the law relating to nonhuman animals, in both its structure and application is lacking in a sound logical theory, and consequently, behaves erratically. This is in part due to society's attitudes towards nonhuman animals which Sankoff describes as "at best schizophrenic and at worst, downright cruel." In his presentation, Sankoff discussed the relative merits of animal welfare laws. He pointed out that whilst enactment of the laws were initially seen to be an important development on the road to animal rights, their effectiveness has been impeded by the fact that they operate within a legal system that classifies nonhuman animals as property.

As a result, Sankoff said, whilst welfare laws appear to temper "the worst cases of animal cruelty," they are limited because they require courts to constantly assess whether acts of cruelty are "necessary" and whether the benefits of human actions outweigh the harm to animals. Such laws are, in their application, inevitably homocentric, which has implications for what kinds of acts attract sanctions and what those sanctions are. **[Continued on page 14]**

# ARLAN PRESENTS ITS DOG CONTROL ACT SUBMISSIONS TO PARLIAMENT

*by Louise Brown*

ARLAN's Dog Control Committee completed and submitted its proposed changes on the Local Government Law Reform Bill (No 2) to the Local Government and Environment Select Committee on the 20<sup>th</sup> of June, 2003. Its submission was received and will now be considered by the Select Committee. The report on the final form of the bill is due to be released on 18 August 2003. The submission made was in regards to the proposed changes to the Dog Control Act 1996 addressed by this new bill [For information on the Bill – see ARLAN Newsletter Vol.2 No.4, June 2003]. ARLAN continues to believe that the Bill, in its current form, is fundamentally flawed, and likely to cause a great deal of unnecessary harm to animals.

The Dog Control Committee (Louise Brown, Jill Jones, Kerry Pollock, Peter Sankoff) met in May to decide which aspects of the bill it wished to critique. The decision was to address concerns that related strictly to legal issues. In particular the committee chose to make a general statement on legislation controlling dogs, breed-banning, the powers of territorial authorities, adverse penalties for “responsible” dog owners, criteria of the new “potentially dangerous dog” category, new onerous requirements being placed on dog owners, the “death penalty” for dogs, and clarification on the definition of “rushing” in regards to “potential harm”. The submission in its entirety is available on ARLAN's website, however, brief synopses of the points made by the committee in the submission are as follows:

ARLAN reinforced its overall position that controlling dogs primarily requires control over irresponsible owners. Moreover, the submission stressed that the lives, interests and needs of dogs should be a major consideration behind legislation designed to control dogs. In this regard, we are concerned that hastily drafted legislation designed to meet “public concern” and not the true nature of the problem is appropriate.

On the position of breed-banning, ARLAN made a submission on the inherent problems with specific breed-banning in relation to pure and mixed breeds. In particular our submission highlighted the unworkable language in identifying a breed or “predominate” nature of a particular breed. The result of such language will inevitably be difficulties in enforcement. In addition, the increased restrictions placed on particular breeds could lead to dog abandonment, with unsure owners taking the “safest” course of action. Finally, breed-banning detracts from the fact that it is not “bad” dogs that need to be controlled [and most scientific evidence shows this to be true] but “bad” ownership. **[Continued on page 6]**



**More Dogs Behind Bars? Inevitable, if the government's bill becomes law.**

## **ARLAN DOG CONTROL ACT SUBMISSIONS**

[Continued from page 5]

Another problematic aspect of the bill is the wide range of powers that it gives to territorial authorities to enact new by-laws without the traditional public consultation provided for under the Local Government Act 2002. This could lead to onerous by-laws being established in varying territories without a proper consultative procedure allowing the public to voice their concerns. Of additional concern is the fact that the new Bill makes controlling dogs and protecting “families” , above the interests of dogs and dog owners. This is highly likely to lead to skewed policies that do not consider the needs of the animals.

ARLAN expressly supports the Bill’s higher penalties for offences committed by dog owners, as this policy is in line with our view that bad owners create bad animals. Still, the removal of any discretion by the Territorial Authority to disqualify owners whose dog commits an offence under the Act is a concern. In particular, it could mean that a responsible dog owner is disqualified for a minor offence that occurred in an exceptional situation. The automatic disqualification of an owner could lead to the “wrong” type of owner being adversely affected. There could be further ramifications if the disqualified owner is a multiple dog owner, as they would be unable to take care of the dogs in their possession.

Another area of concern relates to the new classification of “potentially dangerous dogs” as the determination of what would fall under this category is unclear, and the idea of “potential dangerousness” is likely to be misused. The language of the section makes it virtually impossible for an owner to “know” if their dog is a potentially dangerous dog. In addition, there are no formal means of being made aware of a dog being classified as “potentially dangerous” by a territorial authority.

ARLAN is also worried about the heavy new obligations being put on already “responsible” dog owners. The act would require additional fencing of any property where there is not a “dog free” access to the dwelling house and would inevitably penalise responsible owners. While ARLAN understands the purpose is meant to ensure that dogs are controlled on their property, it is likely to add huge additional expenses on owners who already ensure their dogs do not roam. This portion of the bill is not addressing the real issue of owners who do not control their dog and instead penalises those who do. The further requirement of new dogs being micro-chipped is another example of placing additional expense on a dog owner. ARLAN supports the concept behind monitoring dogs through micro-chips but believes this additional cost should be assisted in some way by the government. Ultimately, these onerous obligations could lead to dog abandonment or needless destruction instead of better control.

ARLAN’s submission to Parliament on the amendments to the Dog Control Act can be read in its entirety by visiting our web site: [www.arlan.org.nz](http://www.arlan.org.nz)

## **AN OVERVIEW OF THE LEGAL FRAMEWORK ALLOWING ANIMAL TESTING FOR CONSUMER PRODUCTS IN NEW ZEALAND**

*by Sabrina Muck*

In New Zealand, there is apparently no testing of personal or household products on animals. Those products available that have been tested on animals are imported, or are made with imported ingredients. A number of New Zealand institutions do engage in animal research and testing for pharmaceutical products, however.

### **WHY TEST ON ANIMALS?**

The decision to test on animals may not necessarily be an economic consideration because evidence indicates that the research can often be more expensive than utilizing non-animal methods. Still, many scientists claim that for some studies there is no choice but to work with animals because new surgical techniques, like organ transplants, cannot be simulated on a computer or practiced on humans. They believe it would be morally wrong to sell treatments for human use without first testing them on laboratory animals.

While scientists claim that safety requires them to test upon animals, there are good reasons to be skeptical of this general pronouncement. First, results have been shown to vary dramatically between species owing to obvious physiological differences. This means that the information gained from animal-based research often cannot be properly extrapolated to human responses. For example, rabbits, commonly used in testing, do not have tear ducts to wash irritants from their eyes. Consequently the Draize (eye) tests that are administered to them are ineffective because the animals will respond differently from humans to any irritable ingredients. Additionally, a common critique of animal testing is that it is often carried out in unrealistic conditions – eg.. the animals will be exposed to a high dose of the substance being tested, over an extended period of time. The potential human consumers of the substance will be unlikely to experience similar conditions.

### **LEGAL CONSTRAINTS**

Animal testing is regulated by the Animal Welfare Act 1999. The Act imposes a general duty of care towards animals, and in particular, a duty to provide for their physical, health and behavioural needs. Nonetheless, under the Act, this duty of care can be suspended during research, testing and teaching, so long as the requirements set out in Part 6 are followed.

“Research, testing, and teaching” is defined in s.5 of the Act to include any work (being investigative work, experimental work, diagnostic work, toxicity testing work, or potency work) that involves the manipulation of any animal. Those who engage in this work and wish to avoid prosecution under the Act must comply with three requirements: first, s87 requires that they establish a Code of Ethical Conduct (CEC). Second, to make sure the CEC is followed, the institution (be it company, institute or university) must also have an Animal Ethics Committee (AEC) to monitor it. **[Continued on page 8]**

## **LEGAL FRAMEWORK FOR ANIMAL TESTING**

[Continued from page 7]

Finally, the CEC must also be submitted to the National Animal Ethics Advisory Committee (NAEAC), a national body that is supposed to ensure that Codes meet the standards of the Animal Welfare Act. Unfortunately, NAEAC has no monitoring or enforcement function to deal with Codes that do not.

### **CODES OF ETHICAL CONDUCT**

The CEC defines the steps an institution must adhere to when it engages in animal research. The Code must set out the policies and procedures to be followed by the code holder and their AEC. These relate partly to process but must also be consistent in substance with the purposes of Part 6 of the Animal Welfare Act. The CEC must be submitted to the NAEAC, and ultimately approved by the Ministry of Agriculture and Forestry.

CECs are different from Codes of Welfare (that regulate particular industries) under the Animal Welfare Act 1999, in that there are no public notification or submissions processes available in relation to CECs. Copies of CECs are not publicly available either. The result is that the public does not know how animal research is approved and regulated, and has no opportunity for input in this area, so there can be no public discussion or debate.

### **ANIMAL ETHICS COMMITTEE**

Each institution must have an AEC, the membership and responsibilities of which are prescribed in the Act and detailed in the Code. These committees consist of senior institution and animal care staff, but are also required by law to have three independent members: a member of a recognised animal welfare organization, a layperson nominated by the local council, and a vet nominated by the NZ Veterinary Association.

As has been reported in prior editions of this newsletter, there are a number of serious questions about the way in which AECs tend to operate in practice. To begin with, the Act sets no maximum number on the membership of AECs; nor does it set any requirements regarding the proportion of internal versus external members. This makes it possible for code holders to create policies which allow the majority of the AEC to be internal members which ultimately means that the votes and objections of the independent external members have little practical effect. The Act is also silent regarding voting requirements, so code holders can institute policies that allow meetings to go ahead even where the mandatory external members are not present.

Under s99 of the Act, the AEC considers all applications for approval of projects and monitors compliance with the conditions of project approvals e.g. animal management practices and facilities. In doing so, the AEC is required to have regard to the scientific or educational objectives of the project, the harm or distress that will be caused to the animals, the extent to which it can be alleviated, the measures taken to ensure the general health and welfare of the animals, and whether those undertaking/supervising the research are suitably qualified to do so.

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## **LEGAL FRAMEWORK FOR ANIMAL TESTING**

[Continued from page 8]

Section 100 of the Act, which sets out the criteria to be considered, does not require an AEC to consider alternatives to animal testing or to use these where they are available. The AEC must consider harm or distress but there are concerns in the way “harm” is quantified under the Act. New Zealand uses a five-point scale to grade the severity of manipulations, but the scale focuses only on the suffering or pain levels of the animals. The degree to which the experiment will affect the quality of the animal’s life, or whether it will kill it, carries little weight.

### **A SELECTION OF ANIMAL WELFARE ISSUES UNDER THE ACT**

One concern of the legislative scheme is that section 81 of the Act effectively exempts Part 6 of the Act (all animal testing) from any of the criminal sanctions set out in Parts 1 and 2. Part 1 deals with the care of animals and requires that they be provided with proper food and water, shelter, and the opportunity to display normal patterns of behaviour. Part 2 regulates conduct towards animals and places restrictions on how animals are treated.

The exemptions were created because experiments may involve depriving animals of food or water, or restraining them. Unfortunately, it is not a well-crafted exemption, and because it applies across the board, it means that animals lose other protections that they would otherwise be entitled to, even where the deprivation might not be specifically linked to the experiment. A legislative alternative would be to have a specific exemption for factors relevant to an experiment, so animals in a starvation study could still have water, shelter and space, for example. Welfare problems raised by the assessment of animal pain and suffering are compounded by the fact that there is no requirement that the animals used be provided with pain relief, even where the procedures are expected to cause them severe suffering.

Additionally, the Act only covers live animal use. Institutions are not required to consider whether work involving animal dissections is necessary; to reduce their animal use in this area; or to keep records of the extent of that use. Finally, there are the usual problems with monitoring and compliance. The Act sets out a precise scheme that is designed to ensure a minimum of animal suffering through a framework of Codes and Committees. Unfortunately, evidence suggests that the lack of monitoring means that many AEC’s essentially do what they like.

### **COMPARATIVE FRAMEWORKS**

The United Kingdom has a specific piece of legislation to deal with this issue in the form of the Animals (Scientific Procedures) Act 1986. This provides for the regulation of animal experiments through an extensive licensing system (also in Germany). All procedures must be carried out under licenses and an independent inspectorate exists to advise on the granting of license and carry out inspections. These are unannounced and are done approximately four times a year. In New Zealand reviews can be done once every five years and there are no provisions for unannounced visits. **[Continued on page 16]**

## **CRIME AND (NO) PUNISHMENT – ANOTHER DAY, ANOTHER RIDICULOUSLY LOW ANIMAL WELFARE SENTENCE**

*by Catriona MacLennan*

He was caught in a snare and struggled desperately to free himself, but only became more entangled. He was terrified, and hurt where the snare's noose dug into his body. The more fearful he became, the harder he struggled and the tighter the noose pulled. He heard footsteps and was then grabbed roughly and pulled away from the snare.

For an instant, he thought he was free. But then a softball bat started raining blows over his body. The brutal whacks caused him unimaginable agony and he screamed in pain. His eye was smashed. The attacker beat him again, the blows so hard that the softball bat broke. Satisfied that he was dead, the attacker picked up his body and tossed it away like a piece of rubbish.

Amazingly, the victim survived. He lost an eye, which was hanging from its socket by the time he received medical attention. He had serious head injuries, and is now fearful of any stranger and unwilling to leave home.

The attacker was prosecuted and convicted in the criminal court. His sentence? An order to pay \$553 in costs. The reason?

The victim was not a person, but rather a cat named Maverick, and our legal system – in spite of the loftily stated principles of the Animal Welfare Act 1999 - does not consider that animal suffering counts for anything or is worthy of punishment.

The attacker was convicted of wilfully ill-treating the cat in such a way as to kill, permanently disable or cause such injury that the animal needs to be put down.

The maximum penalty available to the judge was a jail term of three years and/ or a fine of \$50,000.

Instead, Judge Lindsay Moore sentenced the attacker to pay \$447 in veterinary costs and \$86 in SPCA inspector's mileage expenses.

The truth is, this attacker should have been sentenced to jail. It is difficult to imagine a more deliberate, sustained or brutal attack. If Maverick's suffering did not justify a prison sentence as well as a large fine, it is hard to conceive of what animal cruelty offence a judge would consider that would. As we have seen, no case of animal cruelty in New Zealand – whether it be in relation to horses, dogs, sheep or cats, and whether it cause severe long term suffering or instant death - seems to be severe enough for judges to impose a sentence of imprisonment.

The penalties in the Animal Welfare Act are clearly set out. Parliament made it plain that jail is the place for people who ill-treat animals. It is time for judges to heed that direction.

## **CODES OF WELFARE UNDER THE ANIMAL WELFARE ACT – A GUIDE TO THEIR OPERATION**

*by Cherie Gum*

### **What are Codes of Welfare?**

Codes of welfare are an integral part of the framework and philosophy of the Animal Welfare Act 1999 (AWA). The importance of the Codes relates to the manner in which the Act is organized. In its current form, an offence committed under Parts 1 or 2 of the AWA is a strict liability offence. For example, willfully causing harm to an animal is a strict liability offence, whether or not the offender intended to cause such harm. However, where a person is charged with such an offence under AWA, they have the opportunity to argue and present evidence that their standard of care or conduct equalled or exceeded that specified in a relevant minimum standard in a code of welfare. Therefore, compliance with a relevant code of welfare, where one exists, will be a defence where a person is charged with an offence under Part 1 or 2.

Codes of welfare can be useful, as they can contain details, including explanatory information, that would not be appropriate in a primary piece of legislation. Codes have an important role in facilitating overseas market access and achieving success in those markets, for they set out in detail the types of procedures that must be taken by industries utilizing animals, and are supposed to set standards for proper care.

The benefits of codes include:

- Allowing for an accessible and manageable primary legislation; the codes provide further detail and minimums for animal management and care in specified industries;
- flexibility in modifying and improving animal welfare standards in line with changing community expectations, scientific knowledge and technological change;
- balanced representation of community expectations and views through community involvement in the development of codes; and
- high educational value through an ability to use them to improve community awareness of animal needs.

Codes can be quite detailed as they will be used to promote appropriate behaviour, establish minimum standards and promote best practice in relation to animals owned or in a person's charge. Codes of welfare will be issued by the Minister of Agriculture and Forestry following advice from NAWAC, after a public consultation process.

### **Review of the Codes of Welfare**

When the AWA was enacted in early 2000, it became apparent that certain industries would be without legal protection if there were no Codes in place. Unfortunately, there was not the time to review and draft new, more appropriate Codes before the legislation was put into force. Instead, a compromise position was reached. In 1960, in response to the enactment of the Animals Protection Act 1960, the agricultural and meat industries had set up codes of welfare pertaining to a number of specific industries, in order to suit those industries. **[Continued on page 12]**

## **CODES OF WELFARE UNDER THE ANIMAL WELFARE ACT – A GUIDE TO THEIR OPERATION**

[Continued from page 11]

These earlier codes had not been created in accordance with the tougher requirements of the AWA, and had not been subjected to a public consultation process. Nonetheless, because there were no alternatives available, upon the enactment of the Animal Welfare Act 1999, the purpose of which is to “reform the law relating to the welfare of animals” and to prevent their ill-treatment, six of these codes issued under the Animals Protection Act 1960 were deemed to be codes under the AWA. These codes are:

1. Welfare of Circus Animals and Information for Circus Operators.
2. Welfare of Animals Used in Rodeo Events.
3. Welfare of Exhibit Animals.
4. Welfare of Pigs.
5. Welfare of Layer Hens.
6. Welfare of Broiler Chickens.

Still, the drafters of the AWA recognized that this had to be a temporary solution only. As such, the AWA made provision for review of these codes within three years. At the time, NAWAC agreed three years was sufficient time in order to bring these codes into line with the AWA. The transitional period for review of these codes was to expire on 31 December 2002. However, these codes did not expire. As a result of the looming deadline for the revision of the codes, Parliament hastily passed the Animal Welfare Amendment Bill.



I'm still waiting for a new Code to outlaw this sort of thing... It could be a long and unpleasant wait!

The Animal Welfare Amendment Act 2002 extended the review period from 3 years to 4 years. It also provided for an extended period beyond 4 years as may be specified by the Governor-General by Order in Council, which is a secret meeting of the Executive Council and is something that does not involve Parliament or the democratic system. And further, s191(4) AWA Amendment Act allows the Governor-General, by Order in Council to extend the 4 year extension, by a further 2 years. The result of this is that a law that Parliament carefully considered in 1999 will simply become a matter equivalent to regulatory whim and it is unclear when the existing codes will be fully reviewed. Before the AWA Amendment, there was no provision for extensions of the review period to be made by Order in Council. This now provides a quick and easy mechanism for the government to push through delays with little debate, or even allow indefinite extensions of codes to be made. . [Continued on page 13]

## Why was the review period extended?

The NAWAC had three years within which to digest public submissions, and itself make submissions to the Minister of Agriculture for revision to the codes. Hon. Damien O'Connor, Associate Minister of Agriculture, said that the reason why the codes have not yet been updated is that they are "six very complex codes, which are attracting high levels of public interest". In order to manage the considerable increase in its workload, the NAWAC has more than doubled the number of its meetings, and has been meeting every 6 weeks or so for the past 2 years. He further says that "as part of the code review process, the advisory committee has had to review and consider hundreds of substantive submissions, let alone the tens of thousands of postcards it has received on each draft code it has advertised for public consultation. The inevitable consequence is that the time needed to work through those submissions."

However, Sue Kedgley, MP and Animal Welfare spokesperson for the Green Party, says "it is particularly preposterous because there is absolutely no excuse for the delays that are proposed in this bill. The Ministry of Agriculture and Forestry and the NAWAC have had 3 years to review those six deemed codes. Instead of meeting those legislative deadlines they just changed the law." Moreover, NAWAC knew about four years ago that it would have three years to review the codes.

In order to avoid the expiry of the codes, Parliament enacted the Amendment Act very hastily. As a result of the looming deadline, it was viewed to be urgent legislation which was not first introduced into the House until 8 October. It was finally referred to the select committee on 14 November. The select committee was given less than 3 weeks to call for submissions and allow interested parties to speak on the legislation.

What this meant, unfortunately, was a real lack of submissions on the importance of getting new codes in place quickly. The hasty way in which this piece of legislation was passed, and the decision to spring this on the public at a very late date, avoiding public submissions, is a real signal that Parliament is not treating the AWA with the gravity which it deserves.

The affected industries still play a large part in why the codes have not yet been reviewed. The reason for giving NAWAC three years within which to review the codes was in order to get submissions from the affected industries. Three years should have been sufficient time in order to obtain submissions from the farming communities, review the codes and implement the changes to the industries.

## Consequences of the extension of time for review of the Codes of Welfare

The consequences of refusing to update the Codes are grave. It will continue to consign millions of animals, particularly chickens and pigs, to continue their miserable suffering for many, many years to come, in sow crates and cages, while providing shelter to industries that endorse such practices. Many pigs and hens in New Zealand live their lives in intolerable hell inside cages, where every single instinct is suppressed. **[Continued on page 16]**

## NSW ANIMAL RIGHTS FORUM

[Continued from page 4]

In Sankoff's view, it is time to move away from band-aid solutions such as animal welfare law and to recognise that nonhuman animals have interests of their own which need to be balanced against the needs of humans. Intricately linked to this proposal is the concept of introducing a form of legal standing – at least for certain nonhuman animals. This would allow advocates like Sankoff to access the courts and make legal arguments about the appropriate balance, a process that is currently little more than a dream.

Sankoff encouraged those present at the forum to engage in legal discourse about animal rights. He indicated that the question as to who should get rights and why was not going to be an easy one:

“Perhaps the case should start with primates because people like them, and because they are close in nature to us... The discussion about animal rights is only a beginning. As a species we haven't even decided what rights humans should have but the dialogue in that direction has been productive, and similar dialogue in relation to animals would be equally worthy.”

Sankoff's closing message was clear: There is a lot of work to be done and it is time for the legal profession to start talking about these issues now.

***Katrina Sharman is the chair of NSW Young Lawyers Animal Rights Committee, and was the organizer of the recent forum in Sydney.***

## ARLAN UPDATE

Aside from the work done on submissions over the past two months, ARLAN has been hard at work on a number of activities.

**Fundraising** continues to be a major concern, as we hope to get involved in a number of new initiatives in 2004, and desire to increase our funding to allow this to occur. Several members have been helping us out with our fundraising goals.

Planning is also underway for our **conference** (to be jointly held with the Unitec School of Animal Health and Welfare) in 2004. The conference will be designed to address practical issues arising in animal welfare prosecutions and suggest ways of improving the results that are being achieved.

The second half of our Auckland **seminar series** begins on July 30. ARLAN member Jill Jones, Lecturer at the Manakau Institute of Technology, will give her thoughts on the government's latest initiatives relating to Dog Control. Jill will be speaking at the Law Faculty from 11 am to 12 pm, in Seminar Room 3, in Building 801. Two further seminars are scheduled for 2003. Watch this space for more detail!

ARLAN will also be represented (by Executive Committee Co-Chair Deidre Bourke) at the ANZCCART (Australian and New Zealand Committee for the Care of Animals in Research and Testing) conference coming up in Christchurch in August. The conference will consider a topic close to our hearts: the secrecy and accountability of Animal Ethics Committees in making decisions on animal research.

## CALL FOR HELP!

One of ARLAN's central mandates is to improve the understanding and accessibility of the law relating to animal welfare. We have made no secret of our dissatisfaction with the difficulty in accomplishing this. New Zealand law in this area is notoriously hard to research, as most judgments are unreported, and scattered across the country.

Peter Sankoff, Lecturer at Auckland University's Faculty of Law, and member of ARLAN's Executive Committee, has begun research and organization for a short text tentatively entitled Animal Welfare Law in New Zealand. The idea for the text is to provide practitioners, judges and legislators with handy access to the law relating to animals. It will discuss the theoretical underpinnings of Animal Welfare law and make recommendations for improvements.

Unfortunately, we recognize that most of the law in this area is unreported and somewhat difficult to access. As a result, we are hoping to circumvent this problem by calling on you, ARLAN's members and newsletter readers, to assist in any way you can. We urgently require copies of ANY unreported cases with some legal significance decided under:

- The Animal Protection Act 1960
- The Animal Welfare Act 1999
- The Dog Control Act
- The Marine Mammal Protection Act

A database of all the cases in ARLAN's possession has now been compiled. Rather than sending copies of case material, send a list of cases in your possession that can be checked against our database.

Case names can be mailed to:

Peter Sankoff  
9 Eden Crescent  
Faculty of Law  
University of Auckland  
Auckland

Case names and numbers can also be e-mailed to: [p.sankoff@auckland.ac.nz](mailto:p.sankoff@auckland.ac.nz)

The creation of a text on animals will hopefully promote better consistency and accuracy in the law. Your assistance is invaluable to this exercise.

**ANIMAL TESTING IN NEW ZEALAND – [continued from page 9]**

The Dutch Law for Animal Experiments 1977 prohibits the use of animals where the results could be obtained by alternate means, and the Swedish Animal Protection Act 1988 states that if it is possible to obtain comparable information in a different way, or the research cannot be regarded as being in the public interest, the ethics committee is required to advise against an experiment.

On the 12 June 2002 the European Parliament voted to ban cosmetics tested on animals. The European Assembly then decided not only to back a ban on testing within the EU but also to stop imports of products tested on animals abroad. If Parliament's version of the law is agreed, it could end animal testing within the EU from 2005, and ban products from abroad five years after the law comes into effect, probably late 2007.

One of the functions of the NAEAC is to take into account what people in New Zealand and overseas think are acceptable uses of animals in science, and how ideas about this are changing; and advise the responsible government Minister accordingly. Overseas attitudes towards animal experiments are clearly changing, and New Zealand should at least contemplate a similar step forward.

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**CODES OF WELFARE: A NEED FOR REVIEW – [continued from page 13]**

Those animals are actually unable to express almost any of their natural behaviour. Hens, for example, cannot even extend their wings, let alone peck or turn round in their cages. In effect, the failure to update these Codes makes a mockery of the principles set out in the AWA, for these standards continue to remain inapplicable to huge segments of the animal population.

To conclude, there are no valid reasons for the delay in reviewing the codes of welfare. The NAWAC underestimated the time it would take in order to bring the codes up to the requisite standards specified in the AWA. As a result of the multitude of submissions they have had to sift through, they also underestimated the importance of the issue of animal welfare to the general public.

**SEMINAR VIDEOS NOW AVAILABLE!!**

ARLAN has now begun videotaping seminars for members and others who are not able to see the seminars in person. The first seminar, by Peter Sankoff discussing "Animal Rights vs Animal Welfare" is now available for \$15 plus \$5 postage (in New Zealand). We hope to have a double seminar video tape with both Peter's as well as Neil Well's recent talk on the Animal Welfare Act 1999 available shortly (for \$20 plus \$5 postage).

All cheques should be made out to ARLAN and sent to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand. For overseas pricing email us at: [contact@arlan.org.nz](mailto:contact@arlan.org.nz)

## Barks, Meows and Squawks

A collection of notable quotes on animals and the law.

“...[A]n attack is an unrequested confrontation of a human by a dog made in circumstances where the dog exhibits loud and angry-sounding barks, snarls, or growls, and made within close range of the human... In the court’s opinion... a bite is not necessary for there to be an attack...”

If a dog is territorial or protective, and the facts show that the human has, by intruding, been in law provocative, the offence may not be proven....”

Halderman PCJ. in *R. v. Federiuk* (2002), 224 Sask. R. 308 at 309 (Sask. Provincial Court), setting out his view of the term “attack” in relation to that jurisdiction’s dog control legislation. He found that the dog in question had, in fact, “attacked” a person, even though no bite had occurred. The dog had “snarled, exhibited distinct signs of vicious, angry behaviour”, and the person in question “legitimately believed that she might be bitten.” The owner of the dog was fined and required to muzzle and leash the dog when in public along with a number of other conditions. As no biting had occurred, the dog was not destroyed, however.

**“I am therefore putting you on notice to prepare yourself for every possible sentencing outcome and that may include imprisonment...”**

**-Judge Noel Walsh in the Invercargill District Court, 7 May 2003, in convicting Russell Scobie for the ill-treatment of 37 sheep and other animals. Walsh said the evidence was “overwhelming” and one of the worst cases of animal cruelty to occur in New Zealand.**

**“It really depends how you look at it. From our point of view 400 hours of community service is quite a hefty sentence for a 68-year-old man like Scobie.”**

**- Earl Culham, senior investigator with the Ministry of Agriculture and Forestry’s (MAF) special investigation group, after Scobie was sentenced to 400 hours of community service, and ordered to pay costs of \$7225. Culham added that MAF was hoping for a jail term, but was pleased with the sentence.**

**“Another farmer has been found guilty of animal cruelty, but has got away with only a slap on the wrist.” -Ruben Keeling, reporting on the Scobie case for the Rural News.**

# Animal Rights Legal Advocacy Network

Improving the law to improve the conditions of animals

**ARLAN** is an organization of New Zealand lawyers and law students established in 2001, working to improve the law as it affects animals. We need your help to make this a reality.

## How you can help?

- **Information** – By joining our e-mail chat group you can learn more about animal law issues in New Zealand. In turn, you can keep us posted about issues arising near you. E-mail: [contact@arlan.org.nz](mailto:contact@arlan.org.nz) to join in. Also, check out our web page: [www.arlan.org.nz](http://www.arlan.org.nz)
- **Become an Active Member of ARLAN** – ARLAN urgently needs dedicated lawyers and law students who care about the plight of animals to join our cause. We succeed only to the extent that we have supporting volunteers who are willing to help. There are a number of ways you can assist, and what we need most is your time and enthusiasm! Several projects are underway and require assistance:
  - the **ARLAN Newsletter** needs volunteers to assist in writing and production. We also require volunteers outside of Auckland to assist in distributing our newsletter. To help out contact: [newsletter@arlan.org.nz](mailto:newsletter@arlan.org.nz)
  - the **ARLAN Animal Cruelty Committee** needs volunteers to help us ensure that better animal cruelty prosecutions are undertaken where animals are deliberately hurt. This committee is still in the process of being established, but for more information, contact: [cruelty@arlan.org.nz](mailto:cruelty@arlan.org.nz)
  - the **ARLAN Legislative Review Committee** needs volunteers to assist in reviewing and making submissions on legislative initiatives at different levels of government. To help contact: [betterlaws@arlan.org.nz](mailto:betterlaws@arlan.org.nz)
  - support ARLAN and learn about Animal Law by attending one the **ARLAN Seminar Series**. Watch out for notices in this newsletter.
- There are other ways to help!** If you're not sure what you wish to do, just send us an e-mail at any of the addresses listed above. We'll find a way for you to help!
- **Support ARLAN Financially** – ARLAN is a non-profit organization that exists through the generosity of its members and supporters. While we endeavour to keep costs low, several of our activities require some degree of financial support including the maintenance of our website, and distribution of this newsletter. Any amount you can give would be hugely appreciated. To make a financial contribution, contact: [contributions@arlan.org.nz](mailto:contributions@arlan.org.nz), or simply send a cheque made out to ARLAN to: ARLAN, PO Box 6065, Wellesley St., Auckland, New Zealand.