

Is the Legal Recognition of Animal Sentience Reflective of Changing Animal Ethics?

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1. What is Animal Sentience and Why Does it Matter?

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2. How Does the Law Recognise Animal Sentience?

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3. Is the Growing Trend Towards Legal Recognition of Animal Sentience Reflective of Changing Animal Ethics?

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4. Is Sentience Recognition Sufficient to Reflect the Changes in Public Animal Ethics?

1. What is Animal Sentience and Why Does it Matter?

- o 'the capacity to have feelings' (Jonathan Birch et al's *Review of the Evidence of Sentience in Cephalopod Molluscs and Decapod Crustaceans*)
- o being conscious (David Mellor)
- o having a range of abilities (Donald Broom, eg to evaluate the actions of others in relation to itself and third parties, to remember some of its own actions and their consequences)



1. What is Animal Sentience and Why Does it Matter?

- The ability to subjectively experience life, including the capacity to having both positive emotions like joy and happiness, and negative emotions like pain, suffering and anxiety
- Sentience provides a strong moral reason for both human and animal care and protection



▶ 2. How Does the Law Recognise Animal Sentience?

1. Implicitly
2. Expressly
3. Legal Meaning
4. Australian Context



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Implicitly

1. Much existing animal protection legislation – or laws that purport to protect animals from harm caused by humans - do not include any explanation of why animals should be protected
2. But, they could be interpreted as implicitly recognising that animals are sentient

- The *Prevention of Cruelty to Animals Act 1986* (Vic) states that an act of cruelty towards an animal includes acts or omissions ‘with the result that unreasonable **pain or suffering** is caused, or is likely to be caused, to an animal’ (s9)
- The *Prevention of Cruelty to Animals Act 1979* (NSW) states that an act of cruelty towards an animal includes acts or omissions that ‘unreasonably, unnecessarily or unjustifiably’ cause the animal to experience **pain**. Such acts include beating, kicking, killing and wounding an animal.

► Implicitly

- “Without being sentient, animals cannot suffer; sentience is therefore implicitly at the root of . . . animal protection laws.”
- Even if we conclude that animal sentience is implicitly recognised by animal protection legislation, it cannot be used to provide a full accounting for such legislation.



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Expressly

Trend towards expressly recognising animal sentience in legislation

- European Union
- Netherlands
- France
- Lithuania
- Chile
- Peru
- Colombia
- New Zealand
- Quebec
- UK

Article 13, *Treaty on the Functioning of the European Union 2016*

- ‘In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage’

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Legal Meaning

NEW ZEALAND:

Animal Welfare Act 1999, Long title: An Act— to reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular,— to recognise that animals are **sentient**

OREGON:

Offenses Against General Welfare and Animals ORS 167.305: The Legislative Assembly finds and declares that: (1) Animals are **sentient** beings capable of experiencing pain, stress and fear

AUSTRALIAN CAPITAL TERRITORY:

Animal Welfare Act 1992 s 4A(1)(a), The main objects of this Act are to recognise that - animals are **sentient** beings that are able to subjectively feel and perceive the world around them

The Australian Context

- The ACT amendments made the ACT the first Australian jurisdiction to explicitly recognise animals' sentience in the law – as part of the objects of its animal protection legislation.
- The ACT amendments are also noteworthy in the context of Australian animal welfare legislation because they recognise the 'intrinsic value' of animals and that animals 'deserve to be treated with compassion and have a quality of life that reflects their intrinsic value'.
- Note also that Victoria and Western Australia have committed to recognising animal sentience in legislation in the future, and that sentience is also recognised in the Australia-United Kingdom Free Trade Agreement signed 17 December 2021

3. Is the Growing Trend Towards Legal Recognition of Animal Sentience Reflective of Changing Animal Ethics?

1. Developments in animal welfare science have contributed to increasing concern for animals
2. Public awareness of the lived experiences of many animals have contributed to increasing concern for animals
3. Survey data reveals increasing public concern for animals and changing sentiment around appropriate human-animal interactions
4. Legislative amendments appear to have been driven, at least in part, by a desire to respond to changing public ethics in relation to animals

Developments in animal welfare science have contributed to increasing concern for animals

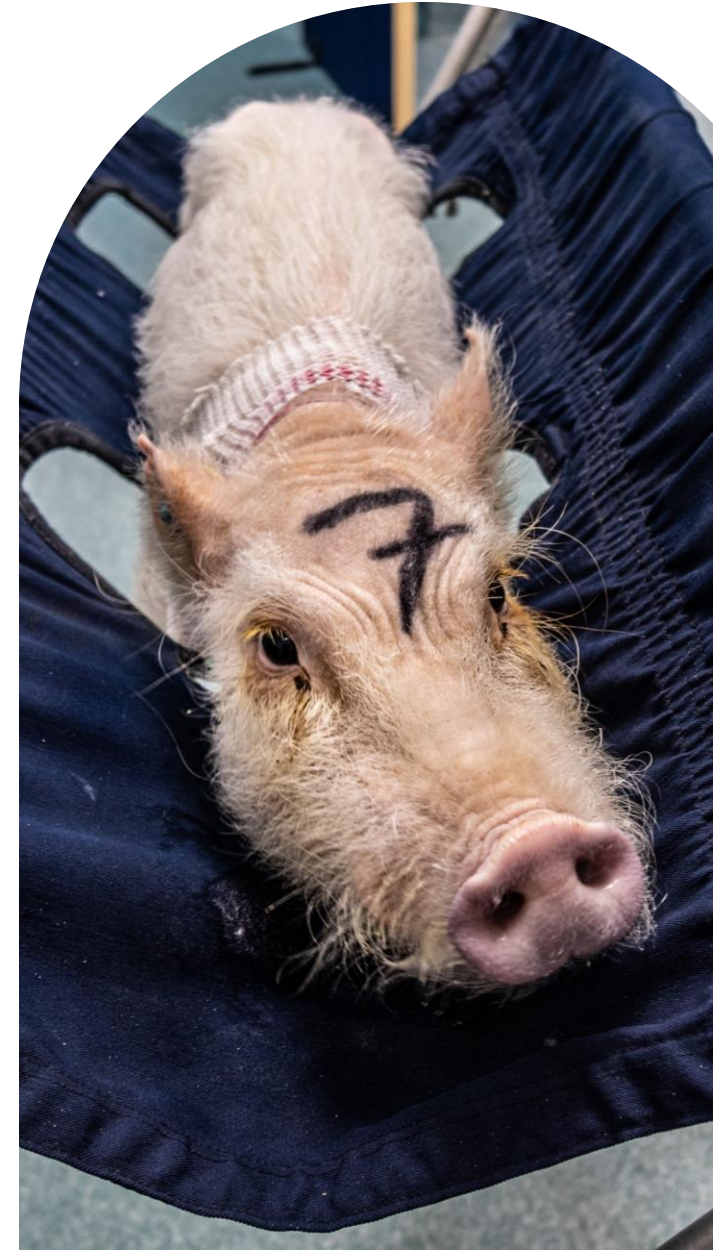
- Descartes has been oft quoted as considering that animals are 'mere automata'
- Research in relation to animal capabilities is clear that many animals are sentient
- Many animals have the capacity to feel both physical and psychological pain that is similar to that experienced by humans



Public awareness of the lived experiences of many animals have contributed to increasing concern for animals

- Popular documentaries like Earthlings (2005) and Dominion (2018)
- ABC Four Corners
- Farm Transparency Project Repository
- We Animals

Unlucky number 7. An immobilized pig awaits the administration of an infusion in a jugular catheter. Spain, 2019. Carlota Saorsa / HIDDEN / We Animals Media



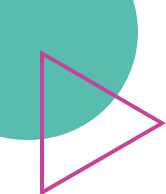
Survey data reveals increasing public concern for animals and changing sentiment around appropriate human-animal interactions

These circumstances have led to significant public concern for animal welfare, which is clearly revealed through survey data:

- In relation to farmed animals
- More broadly
- In Australia



Roe Shpernik
Animal live export Israel 2016



Legislative amendments appear to have been driven, at least in part, by a desire to respond to changing public ethics in relation to animals

Documentation around amendments to legislation that expressly recognise animal sentience demonstrates that these changes in public animal ethics are at least one of the drivers of legislative change

- Australian Capital Territory
- Victoria



The race. Australia, 2010. Jo-Anne McArthur / We Animals Media

▶ 4. Is Sentience Recognition Sufficient to Reflect the Changes in Public Animal Ethics?

- Sentience recognition alone will not bring an end to ways in which humans use animals that has generated public concern
- Legal recognition of animal sentience may further impact public awareness and result in further legal change

**Please feel free to get in touch:
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