

The Future of Australian Animal and Forestry Law

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Abstract:

Animal and environmental law currently subjugate the rights of both animals and nature to anthropocentric interests. Industries are particularly powerful in moulding the law and its application to suit their purposes. This occurs through mechanisms such as regulatory capture, where legislators and/or regulators favour those they are charged with regulating, at the expense of the public interest.

There is abundant evidence of climate regulation being captured by fossil fuel interests (see, eg, ABC Four Corners (2006), Garnaut (2008), Hamilton (2007), Oreskes and Conway (2010), Pearse (2007)). This paper compares Australian animal and forestry law, demonstrating capture in both at the expense of animal and environmental protection goals.

Despite compelling arguments for law reform in such sectors, mustering the political will required to achieve it has proven challenging. So what are the solutions, and how might they be achieved?

This paper argues for a twofold law reform model: firstly, establishing sufficiently independent regulatory institutions; and secondly, empowering surrogate regulation by non-State actors.

High level recommendations for a federal EPA (Hawke (2009)) have been rejected by the Australian Government. Similarly, proposals for a national Independent Office of Animal Welfare are yet to pass the Parliament. These are necessary, but not sufficient, conditions to combat capture.

Bypassing the power of vested interests over government also requires alternate pathways to enforce the law when public bodies fail to do so. Civil enforcement has been essential in environmental law. It is similarly well-suited to industries scrutinised by motivated third parties, such as animal exploitation and forestry.

Third parties (eg, community organisations) also have an important role to play in exposing shortcomings in current regulatory regimes, and thereby building public support for reform. Accordingly, moves to curtail freedom of political communication (eg, "ag-gag" laws, and draconian anti-protest laws) should also be resisted.

Keywords: animal law, biodiversity, federalism, forestry, law reform, politics and the law, regulatory capture, wildlife.

BIOGRAPHY

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