



13 August 2015

Senate Rural and Regional Affairs and Transport Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
**By Email:**

Dear Sir/Madam,

**VOICE FOR ANIMALS (INDEPENDENT OFFICE OF ANIMAL WELFARE) BILL  
2015**

Thank you for the opportunity to provide a submission in relation to the *Voice for Animals (Independent Office of Animal Welfare) Bill 2015 (the Bill)*.

As you may be aware, Animals Australia is a peak animal protection organisation in Australia. On behalf of our member societies and individual members and supporters we are pleased to be able to provide you with this submission.

**Summary**

Animals Australia strongly supports the introduction of an Independent Office of Animal Welfare (**IOAW**) in Australia and believes that it is an appropriate and necessary step to address the failures of the current framework in addressing and upholding animal welfare.

Animals Australia recognises that the Bill proposes a number of positive amendments to the current framework, including the following:

- Collection and distribution of information on animal welfare matters, an area which currently has little centrality of coordination and management, and little transparency.
- Conducting inquiries and preparing reports and recommendations regarding the Exporter Supply Chain Assurance Scheme (ESCAS) and the live export regime.
- Plans to re-develop an Australian Animal Welfare Strategy (AAWS) – a positive step in working towards a nationally consistent animal welfare framework and an increase in animal welfare standards on a national basis.
- The IOAW CEO would monitor, investigate and report on animal welfare issues – this is important to highlight the current issues and deficiencies of animal welfare laws.
- An advisory committee would be made up of a wide range of individuals, including animal welfare groups, which may balance the current disproportionate industry influence in standards development and provide a stronger scientific basis.
- Reports would be tabled in parliament with recommendations, and the Minister would be required to respond.
- Undertake inquiries, research and reporting on effectiveness of current laws on animal welfare.

Nevertheless, whilst we welcome the Bill and acknowledge these many positive developments in the regulation of animal welfare, we submit that unless a number of fundamental amendments are made to the Bill, its intended purpose of improving animal welfare in Australia will not be achieved. These issues will be discussed in detail below.

## **Conflict of interest**

Animals Australia's foremost issue with the Bill in its present form is that it is not clear within which Department the IOAW will sit. We assume that it is most likely that the IOAW will therefore sit within the Department of Agriculture (**the Department**) and will report to the Minister for Agriculture. Animals Australia believes that this will severely limit the achievement of any benefits that the Bill intends to bring about.

### *Current framework*

At the Commonwealth level, the Department is currently the responsible department for animal welfare in Australia.<sup>1</sup> Whilst the majority of animal welfare laws and regulations occur at a State and Territory level, the Commonwealth retains responsibility over some national animal welfare issues, such as live animal export. Further, the drafting and implementation of non-legislative instruments such as Commonwealth policies, Standards and Guidelines (formerly model codes of practice) occurs at the Commonwealth level. While these have no legal standing and are not enforceable in themselves, they do form an important part of the regulation of animal welfare in Australia as they are frequently adopted under State and Territory legislation.

Under this current framework, there is a clear and serious conflict of interest within the Department. The Department's primary responsibility is ensuring profitable and productive primary industries within Australia, with its responsibility for animal welfare being a secondary and often conflicting responsibility. This makes the Department largely unsuited to carry out its responsibilities for animal welfare in Australia, as, in the majority of instances, improvements and strict regulation over animal welfare conflicts with its primary purpose of achieving profitable primary industries.

### *Failures of the current framework*

This current framework has resulted in Australia falling behind in relation to our regulation of animal welfare when compared to progress being made internationally,

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<sup>1</sup> See generally, Department of Agriculture's website: <<http://www.daff.gov.au>>.

particularly relating to livestock. For example, many developed EU countries are phasing out, or have already phased out, a number of intensive farming methods on the basis of their adverse impacts on animal welfare. Traditional barren battery cages for egg laying hens, and the unlimited use of restrictive sow stalls throughout gestation are two examples of methods now prohibited in the EU. No such bans currently exist across Australia (except in the ACT where no factory farms operate, and a recent restriction on sow stalls in Tasmania).

The current framework has also led to a system and inherent culture of non-enforcement of animal welfare laws and regulations and a lack of effective monitoring of animal welfare in Australia. In most cases, the Australian public learns about high-level animal welfare incidents from complaints by animal welfare groups, like Animals Australia or RSPCA, and not from Government regulators, as it should. There is generally poor management of animal industry standards and of enforcement of animal welfare legislation in Australia by the States/Territories, especially in relation to livestock, and especially in intensive industries, and by the Commonwealth in regard to the live export chain. There is inadequate enforcement of the Australian Standards for the Export of Livestock (ASEL) and the Exporter Supply Chain Assurance System (ESCAS) by the Department of Agriculture. This has led to animal welfare groups instead using covert footage to expose livestock cruelty that often occurs beyond the public view. These often very shocking incidents are reported to authorities and publicised, with huge impact. For example, in February 2012 a complaint to the Department by Animals Australia of inhumane treatment of cattle in Indonesia that breached the new Exporter Supply Chain Assurance System (ESCAS) resulted in abattoirs being removed from the approved supply chain.<sup>2</sup>

Nevertheless, despite these continued complaints of serious breaches of animal welfare laws and regulations, serious repercussions for those involved, such as exporters of live animals, have rarely occurred, if ever. Instead, the current failing framework is continually promoted by the Department and business as usual for those involved in the industry goes on, despite their previous breaches. This situation has been reported a number of times, for example, the Neumann report into animal welfare regulation in Australia found that the most important factors leading to the lack of

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<sup>2</sup> <http://www.daff.gov.au/biosecurity/export/live-animals/livestock/investigation-report>.

enforcement included a lack of will on behalf of the regulator to enforce the regulations.<sup>3</sup>

The situation is worsened by the majority of legislation relating to animal welfare at the Commonwealth level providing the Secretary with powers that are mostly discretionary. This is particularly problematic in the regulation of live exports. For example, Order 2.44 of the *Export Control (Animals) Order 2004* states the following:

*(2A) The Secretary may approve an ESCAS if he or she is satisfied that the ESCAS will ensure that live-stock to which it will apply will be transported, handled, slaughtered and subjected to any other related operations in accordance with relevant OIE recommendations.*

*(2B) Without limiting the matters to which the Secretary may have regard when deciding whether to approve an ESCAS, the Secretary:*

*(a) must have regard to how the ESCAS addresses the matters mentioned in subparagraphs 2.42A(2)(a)(i) to (vii); and*

*(b) may have regard to:*

*(i) the exporter's record in adherence to approved ESCASs and compliance with approval conditions; and*

*(ii) any other relevant information of which the Secretary is aware.*

From this, it is evident that the Secretary's decision is discretionary, and that the approval of an ESCAS is not strictly dependent on animal welfare considerations, essentially allowing serious risks to animal welfare and previous breaches to be disregarded where convenient.

It is evident that this conflict of interest is serious and undermines the effective and efficient administration of animal welfare in Australia. Whilst the IOAW has the intention of separating animal welfare responsibilities from the Department, the fact that the CEO will be reporting to, and will be under the direction of, the Minister will place a significant restriction on the effectiveness of the Bill in achieving animal welfare

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<sup>3</sup> Geoff Neumann & Associates Pty Ltd *Review of the Australian Model Codes of Practice For The Welfare of Animals* (2005), 9.

in Australia. For example, section 10 of the Bill states that the Minister may give written directions to the CEO about the performance of the CEO's functions and that the CEO must comply with a direction from the Minister. This means that although the intention of the Bill is to "remove the Agriculture Minister, the industry and their excuses, from the current equation that has them effectively condoning the animal abuse that is continuing right now",<sup>4</sup> in reality, the Minister (and industry through their influence within the Department) will still retain the ultimate say in the decision making process. This significantly undermines any positive developments that are made throughout the Bill, leaving the IOAW that is currently being proposed as simply an advisory body that has no control over the administration or enforcement of animal welfare in Australia.

### **Disproportionate industry influence**

The current framework has also led to a situation whereby industry has a disproportionate influence over the decision-making committees and standard setting process relating to animal welfare. Industry has significant influence over the drafting of model codes of practice (and more recently the Standards and Guidelines), which as mentioned above, usually form part of the accepted standards of welfare for livestock under State and Territory animal welfare laws and regulations. A range of participants from industry are heavily involved in the drafting of these documents.

Whilst there was some public consultation throughout the drafting stages of the national standards and guidelines, industry still heavily influences this process and largely controls the content of those standards.<sup>5</sup> The decision-making process to approve the final documents is also heavily biased because: first approval comes from consideration by the Animal Welfare Task Group which comprises State agriculture and primary industries departmental officers; next the Agriculture Senior Officials Committee (from those same departments); and final 'sign-off' is by 'AGMIN', the committee of State Ministers for Agriculture or Primary Industries, chaired by Federal Agriculture Minister Joyce.

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<sup>4</sup> Voice for Animals (Independent Office of Animal Welfare) Bill 2015, Second Reading speech, The Senate, 23 June 2015 at page 4219.

<sup>5</sup> See: Department of Agriculture, *Review of the Animal Welfare Standards and Guidelines Development Process*, (16 September 2014) < <http://www.agriculture.gov.au/animal-plant-health/welfare/standards-guidelines/review-animal-welfare-standards-and-guidelines-development-process>>.

Again, this issue of disproportionate industry influence was reported by Neumann throughout his review of Australia's animal welfare regulation, where he found that involvement of industry in the code development process resulted in codes merely documenting existing animal welfare and management practices.<sup>6</sup> The 'failures' of this system to deliver sound changes to animal welfare practices is currently being demonstrated by the draft Cattle and draft Sheep Standards and Guidelines which will be 'signed-off' by AGMIN later in 2015. The documents are not significantly different in their permitted practices to the current decades-old Model Codes of Practice. For example, despite public concern, scientific advances and the registration of easily delivered cost-effective analgesia drugs, extremely painful and invasive surgical practices such as mulesing, castration and even dehorning and cattle spaying will continue to be permitted without any pain relief.

Further, industry has significant influence and control over animal welfare science in Australia, meaning that even where 'scientific research' is sought throughout the drafting stages of these documents, it is likely that the research is biased towards industry's desired outcomes.<sup>7</sup> As Ms Melissa Parke stated in 2013, research topics are prioritised and controlled by livestock industries in partnership with the Department and that industry bodies commonly dictate whether research findings are published in scientific journals.<sup>8</sup>

Therefore, although the Bill proposes to develop and reintroduce an Australian Animal Welfare Strategy that will, amongst other things, consider animal welfare issues that arise in respect of the model codes of practice (and now the Standards and Guidelines), in practice this will do little to improve animal welfare in Australia if industry still has significant influence over the drafting and content of these standards. Whilst there is undoubtedly a benefit in having a nationally consistent framework, the impact this will have on animal welfare will be limited unless it can be ensured that the

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<sup>6</sup> Geoff Neumann & Associates Pty Ltd *Review of the Australian Model Codes of Practice For The Welfare of Animals* (2005), 10.

<sup>7</sup> Glenys Oogjes, 'Australian Land Transport Standards and Guidelines: Is the new review process providing protection for transported farm animals?' (2011) 6 *Australian Animal Protection Law Journal* 8, 16-18.

<sup>8</sup> Ms Parkes, House of Representatives, 119 Chamber, 11 February 2013, speaking on the then Independent Office of Animal Welfare that was being proposed.

standards are based on independent unbiased scientific and veterinary research with the focus of ensuring the welfare of animals and not instead on achieving the most profitable animal production systems.

### **Proposed amendments to the Bill**

Animals Australia strongly recommends that the following amendments be made to the Bill in order to ensure its intended purposes are achieved:

- That the IOAW does not sit within the Department of Agriculture. A number of alternative departments would be appropriate for the IOAW to sit within, such as the Attorney General's Department or Department of Environment. This would significantly reduce the conflict of interest that exists under the present framework and limit industry's disproportionate influence.
- That any committee or animal welfare strategy body that sits under the IOAW be expertise-based and carefully chosen to ensure that it is independent and unbiased.
- That the IOAW have authorised officers that have statutory powers to conduct investigations and inspections in relation to Commonwealth animal welfare matters, including for example, the power to inspect and investigate matters relating to live animal export. Further, it should be the IOAW (through its authorised officers) that prepares the compliance reports following alleged or self-reported breaches throughout live export. These reports would be similar to those that are currently prepared by the Department of Agriculture.

Overall, Animals Australia commends the introduction of this Bill into parliament and strongly supports the intentions behind the creation of an IOAW. Whilst the Bill does propose a number of positive amendments to the current framework with the intention of improving animal welfare in Australia, Animals Australia strongly believes that unless the Bill is amended to remove and effectively address the conflict of interest and disproportionate industry influence that currently exists, the Bill will not achieve its intended purpose.

Please contact me if you require further information or explanation.

Yours sincerely,

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**Glenys Oogjes**  
Executive Director