

Chapter 2

Issues

Submissions

2.1 As noted in Chapter 1, the committee agreed not to advertise the inquiry widely or accept public submissions. Instead, a group of animal welfare organisations and the Department of Agriculture were invited to submit to the inquiry. Submissions were received from the following organisations:

- Humane Research Australia;
- PETA Australia;
- RSPCA Australia;
- Animal Liberation;
- Sentient: The Veterinary Institute for Animal Ethics;
- Lawyers for Animals;
- Animals Australia;
- Voiceless;
- Department of Agriculture; and
- World Animal Protection

Support for the bill

2.2 It is noted that the vast majority of submissions received were from organisations which advocate an increased focus on animal welfare. It is also noted that the majority of these submissions expressed support for the Voice for Animals (Independent Office of Animal Welfare) Bill 2015.¹

2.3 RSPCA Australia, for example, expressed support for the intent of the bill and argued that a 'national approach to animal welfare policy and independent oversight of the effectiveness of the live animal export regulatory framework is desperately needed'.² It was further argued that:

A national approach is needed to promote consistency and to develop a proactive strategy that addresses animal welfare issues before they become national headlines. This will create further certainty for business, investment and trade, reduce unnecessary duplication at a state government

1 See, for example, RSPCA Australia, *Submission 3*, Sentient: The Veterinary Institute for Animal Ethics, *Submission 5*, Lawyers for Animals, *Submission 6* and World Animal Protection, *Submission 10*, p. 3.

2 RSPCA Australia, *Submission 3*, p. 1.

level, and most importantly, contribute to the sustained improvement of animal welfare standards across the country.³

2.4 In expressing the view of the Barristers Animal Welfare Panel (BAWP) Director, Mr Graeme McEwen, told the committee that the organisation was supportive of the proposed new legislation and argued that what the bill seeks to do is to encourage the Department of Agriculture – whilst maintaining its powers – to:

... focus properly on animal welfare, because it needs to do so if we are going to move forward. Ultimately, this must be to the benefit of industry. It creates confidence. So this bill, I think, gets it right.⁴

2.5 PETA Australia (PETA) indicated that whilst it is an 'animal rights' rather than 'animal welfare' organisation which 'will always champion an animal rights approach' it is also an organisation that works to minimise animal suffering. PETA noted that its position on the bill overall is, therefore, one of support:⁵

We believe that the establishment of an IOAW is essential and justified ... and a promise to the Australian public long overdue to be fulfilled.⁶⁷

2.6 Animal Liberation indicated that whilst the new legislation proposed by the bill is 'commendable in principal'⁸ the bill does not go far enough. The organisation proposed a measure similar to the Inspector General of Animal Welfare but with greater power – a National Animal Welfare Authority – designed to protect animal welfare in Commonwealth-regulated activities. It was argued that such a body, which could operate concurrently with state and territory laws, and which 'has the power to examine all animal welfare matters within Federal government jurisdiction would provide better protection for animals in Australia'.⁹

Government position on the bill

2.7 The submission provided by the Department of Agriculture outlined the government's position in relation to the issue of animal welfare, particularly as it relates to agricultural production. The submission also made specific comment in relation to the bill and the establishment of an independent office of animal welfare.

3 RSPCA Australia, *Submission 3*, p. 1.

4 Mr Graeme McEwen, Barristers Animal Welfare Panel, *Committee Hansard*, 14 September 2015, p. 16.

5 PETA Australia, *Submission 2*, [p. 1].

6 PETA Australia, *Submission 2*, [p. 1].

7 As noted in the previous chapter, throughout the inquiry the terms 'Independent Office of Animal Welfare' (IOAW) and 'Office of Animal Welfare' (OAW) have been used interchangeably, particularly by submitters. For the purposes of this report, the term Office of Animal Welfare (OAW) will be used, except when using direct quotes or when used to refer to the Office proposed by the then Government in 2013.

8 Animal Liberation, *Submission 4*, pp 2–3.

9 Animal Liberation, *Submission 4*, pp 2–3.

2.8 The Department noted that, on 31 July 2013, the then government announced it would establish an independent position – the IOAW – to review and audit Australia's live export trade processes and develop systems to strengthen Australia's animal welfare assurance system.¹⁰

2.9 However the Department's submission also noted that on 31 October 2013, the Minister for Agriculture, the Hon. Barnaby Joyce, MP, announced that the government would not proceed with the establishment of an IOAW and that the government was:

... confident that the establishment of a regulatory framework for livestock exports was designed to minimise the risk of adverse animal welfare outcomes and that the Inspector General position added an unnecessary [sic] layer of bureaucracy without any practical benefit.¹¹

Australian Animal Welfare Strategy

2.10 The Department of Agriculture's submission noted that, as part of its responsibilities in relation to animal welfare, it 'supports the implementation of the Australian Animal Welfare Strategy (AAWS) as the national blueprint for sustainable improvements in animal welfare'.¹²

2.11 During the committee's hearing, the Department was questioned about the current status of the AAWS. Deputy Secretary, Phillip Glyde indicated that whilst the AAWS had 'been through at least two iterations over the last eight to 10 years', the 'Australian Animal Welfare Strategy exists; it is still there'.¹³ Mr Glyde further explained that:

Previously, the Australian Department of Agriculture had played a pretty strong role in bring together all of the parties, in regular meetings, to monitor the progress of that. The government decided, as a cost-saving measure, to abolish the AusAWAC, as it was called, the advisory committee in relation to AWS. It, nevertheless, maintained the strategy and it remains the responsibility of all of the parties to implement their various responsibilities under the strategy. Essentially, that is what the Australian government is doing.¹⁴

2.12 Mr Glyde also indicated that a Commonwealth/State committee currently exists under AGMIN. It was further noted that:

10 Department of Agriculture, *Submission 9*, p. 1.

11 Department of Agriculture, *Submission 9*, p. 2.

12 Department of Agriculture, *Submission 9*, p. 2.

13 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

14 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

It is a task group that is underneath the chief executives of the departments of agriculture around the country that, in essence, monitors the roles of government. But there are responsibilities for industry in there as well.¹⁵

Comments in relation to specific sections of the bill

Department of Agriculture – conflict of interest

2.13 A number of submissions raised concerns that, at the Commonwealth level, the Department of Agriculture is the department responsible for animal welfare in Australia.¹⁶

2.14 Animals Australia, for example, indicated that the organisation's 'foremost issue with the Bill in its present form is that it is not clear within which Department the IOAW will sit'. However, assuming that it is most likely to sit within the Department of Agriculture, it was argued that, under that framework, there would be a 'clear and serious conflict of interest within the Department':¹⁷

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.¹⁸

2.15 Sentient: The Veterinary Institute for Animal Ethics (Sentient) noted that the organisation has, for some time been concerned about the 'inadequacies of the current animal welfare and related regulatory frameworks in Australia'.¹⁹ The organisation also raised specific concerns about the conflicts of interest which arise when the 'agencies responsible for administering and enforcing the legislation have, as their core business aims, the promotion and profitability of the industries they are attempting to regulate'.²⁰

2.16 Sentient conceded, however, that whilst the bill does not propose that the OAW would directly address the Department of Agriculture's existing conflicts of interest:

It is however, a powerful first step to manage these conflicts by providing oversight by an independent agency. Additionally, this would send a strong

15 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

16 See, for example, Voiceless, *Submission 8*, p. 5, World Animal Protection, *Submission 10*, pp 4–5 and Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, p. 6.

17 Animals Australia, *Submission 7*, p. 3.

18 Animals Australia, *Submission 7*, p. 3.

19 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 1.

20 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 1.

message that such oversight is needed in the jurisdictions. Ideally, of course, state and territory animal welfare legislation should be administered and enforced by independent agencies, such as IOAWs instead of departments of agriculture (as is currently the case).²¹

2.17 Lawyers for Animals (LFA) also indicated its support for the OAW being charged with undertaking inquiries and preparing reports about the activities and effectiveness of both the Live Export Standards Advisory Group (LESAG) and the Office of Animal Welfare Advisory Committee (OAWAC). LFA argued that:

... it is critically important that such review functions be performed by a body that is independent from animal-industry, as the Department of Agriculture cannot be, since it represents the interests of animal-industry to Government.²²

2.18 Voiceless also noted that under the current drafting of the bill, the OAW would report to and take direction from the Minister for Agriculture. Further, the Voiceless submission recommended that, in order for the OAW to be separated from the Department of Agriculture, and to avoid any further conflict of interest:

²³ ... it would be more appropriate for the IOAW and the CEO to report to either the Attorney-General's Department or the Department of the Environment.

2.19 BAWP, however, took a slightly different view regarding the Department of Agriculture's involvement in animal welfare. Director, Mr Graeme McEwen argued that, in terms of animal welfare:

We need to take producers and farmers with us – which is another reason, perhaps, it [animal welfare] should be left with the Department of Agriculture here in Australia. It can see that this is a process brought about with a Department of Agriculture that goes along with it as it responds to reports and inquiries of this Independent Office of Animal Welfare. It is a good thing. And we move forward. I think this bill gets it right.

...

For governments, or even opposition parties, it is good to say, 'We're not removing the teeth from the Department of Agriculture. We do want an animal welfare voice being factored into outcomes rather than, as at the moment, being completely ignored.' Consumers will respond to that. It needs to be explained to rural constituencies or regional constituencies that this, ultimately, is in their best interests, It is all about creating consumer confidence, because that is, ultimately, where the products go.²⁴

21 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, pp 1–2.

22 Lawyers for Animals, *Submission 6*, p. 7.

23 See, for example, Voiceless, *Submission 8*, p. 9.

24 Mr Graeme McEwen, Barristers Animal Welfare Panel, *Committee Hansard*, Monday, 14 September 2015, p. 16.

2.20 In response to the evidence received which raised concerns about the Department's potential conflict of interest (in relation to animal welfare), Deputy Secretary, Mr Phillip Glyde told the committee that:

Earlier today, you heard that you really cannot have the poacher as the gamekeeper and that there is a strong conflict between animal welfare outcomes and livestock profitability. We try in our submission to outline the reasons why we think it is not as simple as that. There is certainly a tension between welfare and profitability, but in our experience, if you improve animal welfare outcomes, you have increased productivity and you have improved competitiveness – for us, particularly, as we are a high cost producer and increasingly our markets are demanding good outcomes, whether it is sustainability in an environmental sense or good animal welfare practice or good supply chain management to ensure the quality and healthiness of our food products that we export. That is one of the keys: good animal welfare practice is a key to improve competitiveness. Finally, on sustainability, unless the Australian community knows that in the great majority of cases animal welfare is being looked after – if that is not nurtured – the community will lose faith in the ability of the industry to do that. So we think there are a lot of good reasons why industry and animal welfare outcomes are intertwined.²⁵

Clause 6 – Constitution

2.21 In line with concerns about the Department of Agriculture's potential conflict of interest, Sentient argued that rather than a CEO, the proposed OAW would be best served by an Independent Commissioner who would answer only to a Minister administratively, rather than by a CEO 'who is a servant of the government'.²⁶ In addition, Sentient argued that:

... the Minister must not be the Minister for Agriculture, given the conflict of interest that is inherent in this portfolio. The IC should report administratively to the Attorney General (AG), and if the IOAW is to be housed inside any department, it should be the AG's Department to ensure independence.²⁷

Clause 9 – Functions of the CEO

2.22 Voiceless argued that the bill should be amended to make clear that the OAW and the OAWAC are responsible for the coordination and development of the animal protection standards, including facilitating the conversion process of the Model Codes of Practice to Standards and Guidelines. It was argued that this would:

25 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, pp 20–21.

26 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 3.

27 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 3.

... resolve the concerns around AHA [Animal Health Australia] continuing to control this process, and ensure appropriate minimum animal protection standards are set that accurately reflect community expectations.²⁸

2.23 Sentient told the committee that 'it would like to see the eventual establishment of statutory authorities similar to the IOAW at the state and territory levels'.²⁹ In the meantime, however, Sentient recommended that:

... the aims of this current bill be extended to allow the IOAW to harmonise animal welfare laws of the Commonwealth and states and territories, as proposed in subsection 9(c) of the bill. The IOAW would then also have the proposed role of a policy body and think tank that, via consultation and discussion, could influence a broader range of animal welfare issues than those for which the Commonwealth government has strict legislative responsibility.³⁰

Clause 10 – Minister may give directions to the CEO

2.24 PETA argued that whilst Clause 10 does note that any directions the Minister gives the CEO must be of a general nature only:

... the potential for abuse of this power does give us pause and we believe it is worth considering some further clarification or limit-setting in regards to this section.³¹

Clause 20 – Termination of appointment

2.25 PETA's submission expressed concern in relation to Clause 20, which provides that the Minister may terminate the appointment of the CEO for, among other things, 'misbehaviour':

PETA's view is that while an exhaustive list of scenarios that might qualify as misbehaviour of course cannot and should not be included in this section, an illustrative one characteristic in statutes containing such ductile terms should be considered, to inject some objectivity into the assessment.³²

Clause 26 – Membership of the committee

2.26 Sentient made several comments in relation to the membership of the OAWAC, including that the three members representing non-governmental animal welfare organisations should include representatives from RSPCA Australia and Animals Australia.

28 Voiceless, *Submission 8*, p. 10.

29 Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, p. 3.

30 Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, pp 3–4.

31 PETA Australia, *Submission 2*, [p. 9].

32 PETA Australia, *Submission 2*, [p. 9].

2.27 It was also argued that because 'most animal and veterinary scientists are funded by industry, it may be difficult to find an independent person'.³³ Sentient therefore made the recommendation that this member should be 'an animal or veterinary scientist who is independent of industry and has demonstrated expertise in animal welfare research, teaching or advocacy, and has related higher qualifications'.³⁴

2.28 Sentient also recommended:

- the addition to the OAWAC of one member who represents the veterinary profession; and
- that a clause be added to ensure that no more than 50 per cent of members may be affiliated with industry to ensure a balance on the committee.

2.29 World Animal Protection also commented on the issue of OAWAC membership. The organisation indicated that whilst it is supportive of the structure proposed by the bill, it believes the OAWAC should be 'underpinned by an advisory and standard setting committee',³⁵ consisting of:

- members representing the Commonwealth, States and Territories;
- members representing industry interest, 1 for each production animal group; 1 for companion animals; 1 for aquatic animals; 1 for animals in the wild; 1 for animals in sport/on display; 1 for animals in research;
- members representing community interests – for each production animal group references above and one each for companion, aquatic, wildlife, sport and research;
- members representing academia and the law; and
- expert scientific and technical members.

Committee comment

2.30 The committee notes widespread disagreement, even among animal welfare groups, as to the structure and tone of any new animal welfare body

2.31 The committee also notes that the Australian Animal Welfare Strategy still exists and that the Department of Agriculture continues its involvement in the Commonwealth-state committee under AGMIN, and continues to have responsibility for monitoring the roles of government.

2.32 The committee therefore does not support the establishment of a statutory authority, the substantive functions of which are already achieved through existing mechanisms.

33 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 5.

34 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 5.

35 World Animal Protection, *Submission 10*, p. 6.

Recommendation

2.33 The committee recommends that the bill not be passed.

Senator the Hon. Bill Heffernan

Chair

