



### **Submission on Draft Recommendations 5.1 and 5.2: Regulation of Australian Agriculture**

Animal Liberation is an animal rights charity founded in 1976 by Christine Townend, based on the philosophies set out by Professor Peter Singer in his best-selling book, *Animal Liberation*.

#### **Our goal**

We believe all animals have the right to live free from human intervention. As societies throughout time have had to fight for the rights of slaves, women and other minority groups to challenge dominant social views, the animal rights movement is now the greatest social change movement around the world. Animal Liberation intends to fight for all non-human animals until they are able to live lives of their choosing, free from intervention, use and abuse by humans.

#### **Our work**

- We pursue our goal through education campaigns, public events and using the media to get our message across. Our mission statement is: *to work toward the end of suffering of exploited and confined animals, through legislation, consumer advocacy, action and humane education*
- We run a 1800 Cruelty Hotline for people in VIC and NSW country and rural areas to report neglect and cruelty to animals – over a period of eight years this service has assisted hundreds of thousands of animals
- The development of campaign strategies designed to influence changes in law and consumer behaviour
- Research, investigation and evidence gathering into areas such as the use of non-human animals for food, entertainment, science and fashion

## *Background*

Animal Liberation understands a National Animal Welfare Bill 2003 was proposed and reintroduced in 2005. The proposed Authority would have implemented legislation, advised the Minister, and appointed an inspectorate for enforcement purposes. If a similar Bill was proposed that established such an agency or authority, this would be supported by Animal Liberation.

The ability to appoint inspectors and enforce current laws under an Independent body is essential (as explained in detail later). The recent exposé of cruelty within the greyhound industry, for example, showed systemic animal cruelty across different states in Australia. Similar systemic cruelty has been exposed in other animal-based industries including the broiler chicken industry and Australian pig farming industries. Commonwealth legislation would ensure that states and territories could work cooperatively and could also ensure that systemic Australia-wide issues are addressed appropriately.

The Commonwealth has power to legislate on animal welfare issues. There is considerable power under, for example, corporations power to legislate on animal welfare. While there would remain gaps for animals not used in trade or controlled by corporations, state laws would continue to cover these areas.

Animal Liberation recognises that a referral of power from the states to the Commonwealth is not the most logical conclusion at this point in time. What is required is an Independent Animal Welfare Authority whereby all persons within federal jurisdictions – including corporations, traders etc. are overseen by the Independent Animal Welfare Authority who have the ability to enforce animal welfare law and ensure that animal cruelty does not take place.

Below is an outline of the proposed Independent Animal Welfare Authority and its functions.

### *Independent Animal Welfare Authority*

Animal Liberation proposes that an Independent Animal Welfare Authority should have the function of prescribing minimum standards of animal welfare, investigating suspected breaches of applicable laws and standards, undertaking research, advising Government and educating the public, and powers including power to require production of documents and the provision of information.

An Independent Animal Welfare Authority would work in cooperation with other relevant agencies including the police. It would also strengthen the animal welfare regime in a way consistent with other features of public policy.

It is submitted that the law should include a mechanism for improving standards of animal welfare, especially as technology, wealth and other factors develop. It should not be necessary for animal welfare standards to remain usually static, occasionally leaping forward in response to a discovered

atrocities. Rather, the Independent Animal Welfare Authority proposed, or another authority, should have the function of prescribing minimum standards and recommending legislative improvement, and, perhaps most importantly of all, educating the public.

Consideration of this proposal cannot be divorced from the questions of what functions (including powers) the Independent Animal Welfare Authority should have. These are considered in a moment. First, however, these propositions are advanced:

- Where a particular problem of criminal offending and making law enforcement more effective has been identified as needing a response in public policy (especially the highest form of public policy, legislation) it should be addressed through public means, and by properly empowered public bodies.
- In rare cases, a public body may be established with special powers, even powers that abrogate rights that exist in the general law. Those cases are ones where the moral turpitude involved in, and the harmful effects flowing from, the misconduct in question combine with the insufficiency of alternative measures to justify a special body with special powers. Of course, there is not a simple dichotomy such that a social or other problem is either big enough or not big enough to justify a predefined and inflexible set of powers and resources. Rather, there is a scale along which greater problems attract greater powers and resources.
- To the extent possible, measures to deal with cruelty to animals affected by the live export or kangaroo meat industry should be part of, or at least consistent with, the broader regime for animal protection. A multitude of animal protection regimes—perhaps some focussed on certain animals, and others focussed on certain dangers to animals—would be poor public policy, and much worse than having a general, coherent animal protection regime with a role that included the protection of animals affected by these industries.

Animal protection is an issue that warrants a firm response in public policy. There are practical problems that warrant special legal measures to overcome them. These include:

- Animals cannot complain or testify, so special measures to detect crimes are needed.
- In some cases, animals are exploited by industries for profit. This fact puts the relevant animals in the doubly vulnerable position that there is a motivation inconsistent with their welfare, and they do not get the instinctive protection that is afforded to domestic pets. (In referring to an inconsistent motivation, it is not said that it is impossible to protect animals used in industry, only that there is an additional risk for them, warranting additional protective measures.)

- Of its nature, much of the offending against animals occurs on private property and in secret circumstances.

It is not necessary to attempt to compare very different problems, and decide whether or not animal cruelty ranks with, say, public sector corruption or organized crime, but Animal Liberation does submit that the problem of protecting animals from cruelty is so fraught with difficulty, that the more serious cases of abuse are so heinous, and that the animals are so vulnerable, that at least some sort of standing and powerful national authority should be established to deal with the problem. Such an authority should be funded entirely by the Government to ensure it can complete its tasks, rather than rely on donations from the public. The RSPCA has often stated that it has been unable to act on animal cruelty complaints because of low staff and inadequate funding.

An Independent Animal Welfare Authority should have functions that include:

- investigating allegations, and circumstances that imply, that animal cruelty offences (including neglect) have been, are being, or are likely to be committed. As stated this may include issues associated within the live export trade, with Australian wildlife such as the trade of kangaroos, but also for any corporation in control of animals including, for example, the use of animals in intensive agriculture;
- working with police and other bodies to the same end, including through entering agreements for joint action;
- undertaking relevant research;
- making recommendations to government about legislative and other public policy measures relating to animal welfare;
- prescribing minimum standards for animal welfare (in particular, standards tailored to the particular characteristics and needs of particular species within the oversight mechanisms listed above); and
- educating those involved with animals, and the public generally, about animal welfare issues and law.

The powers and standing that the Independent Animal Welfare Authority, or its Inspectors, might have include:

- power to serve notices requiring the production of documents;

- power to require a person (alternatively, persons in certain classes, *e.g.* those engaged in industries exploiting animals or those whose animal-related occupation requires a licence) to provide a written statement of information;
- power to summon people to attend and answer questions (a wider debate than can sensibly be offered here would be needed before the requirement to answer questions should be framed so as to abrogate various privileges);
- standing to apply for search warrants; and
- standing to apply for surveillance device warrants.

It is submitted that consideration might properly be given to requiring the Authority to be headed by a lawyer. The main reason for this is that the Authority or its inspectors, at least as proposed, would have certain statutory powers that interfere with common law rights: the exercise of such powers should not be undertaken by a person who is not well versed in the nature, rationale and importance of those rights, and who is qualified to exercise the powers according to law. Of course, non-lawyers can be appropriately educated on such matters, but lawyers have a relevant *prima facie* advantage. Furthermore, a lawyer would be an appropriate head because the primary functions of this role would, as proposed, largely be ones of law enforcement and the development of public policy - functions that are suitable for discharge by a lawyer.

It is also suggested that any authority is kept separate from any Commonwealth Minister who has the responsibility of agriculture and primary industries. There is a clear conflict of interest for any Minister charged with ensuring the ongoing financial stability of agriculture who also has responsibility for animal welfare. Financial stability of animal industries and animal welfare are often conflicting.

### *Is an Independent Animal Welfare Authority Required?*

Animal Liberation proposes that yes, such an Independent authority is essential in Australia. Animal welfare standards will be no better than their enforcement. There is a need for special legal measures for the detection and proof of animal welfare offences, for the animals cannot complain or testify. Many animals are in the especially vulnerable position of being kept not for love but for profit. Yet, taking account not just of the law but also of current practice and policy, the current framework for law enforcement in this area is weaker than that for the enforcement of other departments of the law.

One of the issues that it is respectfully submitted is worthy of attention is whether or not the RSPCA and the AWL, and maybe even the police, have a full understanding of how powerful the law

potentially is. It appears that widespread problems of serious animal cruelty persisted in the greyhound racing industry and also in the live export industry for some time without adequate enforcement of the law until animal activists without special legal status as law enforcement officers undertook private investigations and then persuaded the Australian Broadcasting Corporation (in particular, staff of its *Four Corners* program) to become involved. It seems that only thereafter did police and the RSPCA take action in both of these cases. The real question is what was done before the involvement of the ABC? If not enough was done, was it because the full facilities of the law were not used?

Further to this, it is understandable that a public law (*i.e.*, the *Cruel Treatment of Cattle Act 1822* (UK)) that was enacted before the *Metropolitan Police Act 1829* (UK) was being enforced by a charity that was established in 1824, before the Metropolitan Police Service was. However, with all proper respect for the RSPCA in NSW and Australia, the maintenance today of an arrangement whereby a private organization is the primary enforcer of a public law is the maintenance of an anachronism. The problem is not that the arrangement is old: it is that the arrangement is a pre-1829 arrangement that is not as good as modern arrangements. The modern approach—and, it is submitted, the better and more principled approach—is that when a problem requiring a public policy response is identified and addressed by a public law, the law is to be administered and enforced by a public authority.

### *Conclusion*

Animal welfare needs to be identified as an National issue of concern. Proactive legislation with the establishment of an Independent Animal Welfare Authority which has the power to examine all animal welfare matters within Federal government jurisdiction would provide better protection for animals in Australia.

Submitted by Emma Hurst, Animal Liberation

Please send any correspondence to:

Animal Liberation

Suite 506, 89 York St

Sydney, 2000.