

RSPCA Australia submission to the Regulation of Australian Agriculture: Productivity Commission Draft Report

RSPCA Australia thanks the Productivity Commission for the opportunity provide comment on the Draft Report on the Regulation of Australian Agriculture.

We were pleased to see the considerable attention given to the regulation of animal welfare in the Draft Report. Chapter 5 evidenced a high level of research and understanding of animal welfare regulation in Australia and the challenges and deficiencies of the current framework. Animal welfare is an issue of growing concern to the Australian community and will play an increasingly significant role in the future of livestock agriculture. The level of consideration given to this area of regulation in the Draft Report is therefore well warranted.

1. Recommendation 5.1 - establishing an independent animal welfare body

RSPCA Australia fully supports the recommendation to establish an independent body tasked with developing national standards and guidelines for farm animal welfare. The need for such a body is well canvassed in the Draft Report. The RSPCA agrees entirely with the Commission's reasoning in this regard.

We believe an independent animal welfare body will provide benefits to both livestock industries and animal welfare. These benefits include:

- The promotion of national consistency in animal welfare regulation;
- Improved community and consumer confidence in livestock industries;
- The promotion of Australia's international reputation and standing on animal welfare;
- Increased cooperation among stakeholders reducing adversarial approaches to advocacy.

Most effective governance structure

Ideally, the body should be established via statute. The enabling statute could:

- Safeguard the body's independence;
- Delineate the body's functions;
- Set out the composition of scientific and advisory bodies;
- Appoint a CEO;
- Set out a process for developing national animal welfare standards including key decision-making principles and factors to be considered (equivalent to Part 5 of New Zealand's *Animal Welfare Act 1999*).

Two fundamental questions involved in developing animal welfare policy and standards include:

1. What an animal's state of welfare *is*; and
2. What an animal's state of welfare *ought to be*.

The first question is purely a matter of science. The second is primarily a matter of ethics, informed by community opinion and politics. It is vital that these questions are not conflated. They should be determined independently of one another (although question 2 will be informed by advice on question 1) and the governance structure of the proposed body should be informed by this need. Therefore, the RSPCA supports the proposed establishment of both a scientific advisory committee and a community ethics advisory committee. The membership and functions of each of these committees could be established in the body's enabling statute.

Body's responsibilities

The body should be delegated with the following responsibilities:

- managing the process for setting national animal welfare standards in conjunction with state and territory governments;
- supporting the operation of an independent national animal welfare scientific advisory committee;
- supporting the operation of an independent national community ethics advisory committee;
- providing advice to government on animal welfare policy issues of national significance;
- coordinating the allocation of public funding for animal welfare scientific research, including public funds currently dedicated to rural research and development corporations for such purposes;
- inquiring into and publishing reports on animal welfare issues, including with respect to state and territory performance on animal welfare standards and enforcement arrangements; and
- inquiring into and making recommendations to the responsible minister on the regulation of the live export trade.

Processes for informing and gauging community values

It is critical to the legitimacy and integrity of animal welfare standards that they are informed by community expectations. The independent body, through the community ethics advisory committee, could commission periodic (perhaps triennial) national surveys to track Australians' attitudes to animals generally (similar to the Eurobarometer or the Franklin study¹).

In addition to this, the community ethics advisory committee should be responsible for undertaking focused social science research at outset of national standard-setting process to gauge community opinion on specific issues to be addressed by the standards.

Funding

Funding for a national independent animal welfare body should come primarily from the Australian Government. The body should not be reliant on funding from industry sources as this may jeopardise its independence. Current and past funding sources could be relied upon or re-instated. These include:

1. Current Australian Government funding for the development of national animal welfare standards;

¹ Franklin, Adrian, 'Human-nonhuman Animal Relationships in Australia: An Overview of Results from the First National Survey and Follow-up Case Studies 2000-2004' (2007) 15 *Society and Animals* 7.

2. Public funding dedicated to rural research and development corporations for animal welfare research;
3. Pre-2013 animal welfare funding sources, including:
 - a. Funding for the animal welfare unit within the Department of Agriculture; and
 - b. \$1.2 million in annual funding for the former *Australian Animal Welfare Strategy*.

2. Recommendation 5.2 - state enforcement

RSPCA Australia supports all aspects of recommendation 5.2.

Separation between agriculture policy matters and farm animal welfare enforcement functions should be effected by delegating the latter function to independent animal welfare bodies at the state level. The arguments made out in the Draft Report for supporting the establishment of an independent body at the federal level, apply equally to the establishment of equivalent bodies at the state and territory level. Independent animal welfare bodies at the state level could have responsibility for the administration of state animal welfare law. Inspectors responsible for enforcing such legislation could be appointed from a variety of different organisations and government departments (as they are now) but the independent animal welfare bodies could be made responsible for overseeing the appointment, training, and reporting and accountability obligations of the inspectors. This would improve uniformity in training and standards of enforcement among the different organisations involved in animal welfare law enforcement at the state level.

We agree that monitoring and enforcement activities should be publicly reported and made more transparent, particularly those enforcement activities carried out by government departments.

We strongly support the provision of adequate resourcing for enforcement activities by state and territory governments. A chronic lack of funding and investment in farm animal welfare monitoring and enforcement at the state level constitutes one of the primary failings of Australia's animal welfare regulatory framework. The current level of resourcing in no way reflects the degree of public interest involved and this needs to be rectified as a matter of urgency. Greater resources must be dedicated to establishing formal routine inspections programs where government officers inspect livestock and other animal facilities according to key animal welfare performance indicators on a regular basis.

RSPCA supports the formal recognition of industry QA schemes however such recognition should not come at the expense of on-the-ground government inspection. Desktop audits of industry QA schemes on their own are not sufficient to ensure animal welfare standards are being vigorously upheld. Too greater reliance on industry QA schemes can risk allowing serious breaches of animal welfare law involving significant degrees of animal suffering to be handled 'in-house' and to go unpunished. To avoid this, formal government inspections programs must operate in conjunction with industry QA schemes.

3. Live export regulation

Live animal export remains a highly controversial trade with little support from the Australian community. The Exporter Supply Chain Assurance System (ESCAS) was introduced in 2011 with the intention of improving community confidence in the trade by providing greater animal welfare assurances. We do not believe it is meeting its objectives. There have now been over 110 reports of noncompliance with Australia's live export regulations since 2011. Many of these reports have been substantiated with findings of critical and major noncompliances involving many thousands of animals yet no punitive sanctions have been imposed on exporters.

In addition to the lack of adequate penalties imposed, we hold serious concerns about the veracity of audits conducted under the ESCAS. A system of audits of approved facilities in the importing countries is supposed to underpin the ESCAS. However, auditors are appointed by the exporters themselves and their audits reports have been found wanting on many occasions.

The rapid approval of supply chains in Vietnam provides evidence of lax auditing and the rubber stamping of supply chains by the Department of Agriculture and Water Resources. In 2012, just 3,353 cattle were shipped to Vietnam; in 2015, that number had jumped to 311,523. The Australian Government now approves nine exporters to send 20-30,000 cattle per month to over 200 facilities. There are now more Australian Government-approved abattoirs in Vietnam than there are abattoirs operating in Australia. Many of these facilities are small, rudimentary operations with the capacity to slaughter only a handful of animals per day. They lack much of the basic infrastructure, equipment and training required to ensure the handling and slaughter is humane.

Such rapid expansion in such high risk conditions could only be made possible via a process of rubber stamping supply chains, and this has played out in the country's compliance record. Exporters have more recorded breaches of ESCAS in Vietnam than in any other country, including evidence of Australian cattle being bludgeoned to death with sledgehammers. Such evidence was presented to the Australian Government in June 2013, May 2015, and most recently, in June 2016. Despite these reports, and others regarding supply chain 'leakage' involving thousands of animals (who likely met a similar fate as sledgehammering is a common method of killing cattle in Vietnam), the Australian Government saw fit to approve the aggressive expansion of supply chains throughout the developing nation.

The case of Vietnam shows that the administration of ESCAS has failed. RSPCA Australia is therefore calling for the Australian Government to initiate an independent review of the ESCAS. In light of the complex legal and regulatory questions involved, including the nature and availability of penalties and enforcement tools under the relevant regulations, we would recommend the review be conducted by a former senior judicial officer.

Suggestions by live exporters that the ESCAS should be reformed to allow for 'reasonable' compliance² are nonsensical and should be rejected outright. As discussed above, punitive sanctions are rarely imposed now. Limiting liability for noncompliances any further would completely undermine the ESCAS and destroy any remnant of community confidence left in the trade and the regulatory system.

RSPCA Australia has been briefed on the development of the industry's proposed QA scheme for the trade - the Livestock Global Assurance Program (LGAP). We understand the Australian Government is currently considering the potential for LGAP to be used as a means of demonstrating compliance with the ESCAS. We note there are some aspects of the LGAP which may result in improved standards to that of the ESCAS, particularly relating to the appointment, skills and experience of auditors under the Program. However, we are yet to be advised of many aspects of the program including but not limited to: the way in which the LGAP is intended to be formally recognised through the live export regulatory framework; how the program will publicly report non conformities with ESCAS and action taken by the Government; how the Government will impose penalties including licence cancellation when information is provided to LGAP not the Government; and how LGAP and ESCAS will operate concurrently given they have different minimum requirements, for example auditor competency.

² Productivity Commission Draft Report, p.220.

We would be strongly opposed to any watering down of the Government's oversight of the trade and ability to intervene when animal welfare is at risk and in cases of noncompliance. The live export industry does not have the confidence of the Australian community to self-regulate. The Government must maintain a strong and direct role in regulating the trade, and this could, in-part, be serviced by an independent animal welfare body.

4. Farm trespass

We note the draft report addresses concerns relating to farm trespass by animal advocates. This is a very real concern as trespass activities have increased significantly in recent years. We believe this is partly associated with a loss of confidence in government's role in monitoring and upholding animal welfare standards and therefore agree with the Commission's observation that 'one way of reducing it is to remove the motivation for it' by increasing 'confidence within the community that livestock welfare outcomes are being achieved.'³

The proposal of laws designed to target and 'crack down' on activists' private investigative activities are likely to be counter-productive as they can be perceived by the community as an attempt by livestock industries to close doors and shut down debate. This leads to a perception that livestock industries have something to hide thereby lowering trust. Programs and initiatives that improve the transparency and openness of livestock industries are likely to be more effective in reducing incidents of farm trespass in the long-term. In the interim, current criminal laws prohibiting trespass, surveillance devices legislation, and biosecurity laws are sufficient to hold farm trespassers to account.

³ Productivity Commission Draft Report, p.292.