



17 February 2016

DC:sr

Regulation & Productivity Commission
Locked Bag 2
Collins Street East
MELBOURNE VIC 8003

And by email: agriculture@pc.gov.au

Dear sir/Madam,

Productivity Commission Issues Paper: Regulation of Australian Agriculture

1. The Law Society of South Australia (**the Society**) welcomes the opportunity to make a submission on the above named issues paper, particularly those issues arising under the heading "*Animal Welfare*" and is grateful for the extension of time allowed for this submission to be completed.
2. Our Animal Law Committee has informed the views expressed in this submission. The submission provides responses to the questions raised via the six dot points set out on page 17 of the issues paper.

Question 1 – Do existing animal welfare regulations (at the Australian and state and territory government levels) efficiently and effectively meet community expectations about the humane treatment of animals used in agriculture production?

3. It is the Society's view that the existing animal welfare regulations require improvement to meet community expectations in relation to the humane treatment of animals used in agriculture production.
4. One national survey which measured trends in attitudes to animals found that 52% of Australians believe that modern farming methods in the production of eggs, milk and meat were cruel.¹
5. The primary concerns of the community seem to relate to intensive confinement systems such as the use of battery cages for laying hens and individual stalls for sows, routine surgical procedures without pain relief (often performed by persons not

¹ Adrian Franklin "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* 7-27.

qualified as veterinarians), food and water deprivation during transport and in sale yards and humane slaughtering practices.

6. A study commissioned by the Victorian Department of Primary Industries revealed that 32% of Victorians had 'low levels of trust' in farmers being prepared to address animal welfare concerns without legal or government coercion.²
7. The same study commented on the risk that these attitudes coupled with diminishing levels of confidence posed a risk for social authorisation of livestock industries and the potential for disruptive forms of protest.³
8. The current process of converting the national Model Codes of Practice for the Welfare of Animals into Australian Standards and Guidelines for the Welfare of Animals continues to fail to adequately take into account community expectations- despite the fact that statements are made in those Standards and Guidelines about the importance of community expectations being met.
9. An independent review of the standards development process conducted by PricewaterhouseCoopers in 2013 (**the PwC review**) recommended that "*the gap in understanding of community expectations*" be "*addressed through focused social science research*". The Society is not aware of any plans for this sort of research to be conducted as part of the development of such standards in the future (it has not been done in the context of the Standards and Guidelines for the Welfare of Domestic Poultry which is currently under development).
10. The absence of any such social science research must inevitably lead to the failure of the Standards and Guidelines to meet the expectations of the community – simply because no adequate, principled enquiry of the community as to what its expectations are has formed part of the process.
11. If State, Territory and National animal welfare standards and regulations are to achieve their expressed purpose and policy objectives of meeting community expectations the process of development of those standards and regulations must include proper enquiry and analysis of the views and expectations of the community in this area.

Question 2 – Do animal welfare regulations materially affect the competitiveness of livestock industries, and, if so, how?

12. It may be thought that an improvement in the mandated standards of animal welfare in production animals would increase production costs and thereby adversely affect the competitiveness of Australian livestock producers.
13. Presumably this means that some Australian farmers' products may become more expensive and as a result they will be unable to compete with cheaper products from elsewhere with lower animal welfare standards.

² Peter Parbery & Roger Wilkinson 'Victorians' Attitudes to Farming' (2012) *Department of Primary Industries* 3

³ *Ibid*

14. The Society refers to the New Zealand experience which indicates the opposite is true.
15. New Zealand has not conducted any exports of live animals for slaughter since 2007, having suspended the export of live sheep for slaughter (after an Australian shipment of sheep to the Middle East went wrong and c.4,000 sheep died *en route*) instead focussing on producing boxed meat for markets in Europe, Japan and Asia.
16. After public debate about live exports by the issue of the 2007 Customs Export Prohibition Order the New Zealand Government prohibited live export for slaughter, unless a stringent set of welfare conditions could be complied with, both on ships and in importing countries (including auditing of feed lots in abattoirs, compliance with Animal Welfare Guidelines of the World Organisation for Animal Health (OIE) and the stunning of animals before slaughter).
17. No live animals have been exported for slaughter since the Order was introduced and New Zealand's Agriculture Minister recently foreshadowed it may soon be completely prohibited through an amendment to the New Zealand *Animal Welfare Act*.
18. The Society notes in passing that the attitude of the New Zealand legislature to Animal Welfare issues is rather more developed than in Australia; in 2015 the introductory paragraph to the New Zealand *Animal Welfare Act* was amended to read:

"An Act—
(a) to reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular,—
(i) to recognise that animals are sentient:"
19. This statement underpins the attitude of the New Zealand legislature to animal welfare issues generally.
20. An overview of the New Zealand experience regarding the cessation of live animal exports was articulated on ABC radio in an interview conducted by Ms Geraldine Doogue on 18 June 2011 with the former New Zealand Agriculture Minister, Mr Jim Anderton.
21. Mr Anderton described that in New Zealand initial resistance from farmers and the live export industry was overcome to the extent that most sections of the industry now supported the ban on live exports.
22. When asked if New Zealand had been disadvantaged by not exporting live animals, he declared that given the high value of other New Zealand agriculture exports, which could be at risk if the country's reputation was tarnished by the live export trade, "*it is a no brainer as a country and we would not ever think about it (resuming live exports) now*".
23. The New Zealand experience is that the banning of live exports not only satisfied the New Zealand community's desire for humane treatment of animals, but also generated jobs in New Zealand because the slaughtering and processing of meat products was done in New Zealand rather than overseas.

24. If this was to be replicated in Australia, it is suggested that this could only be a positive step in the current economic climate.
25. In early 2014, New Zealand Minister, Mr Nathan Guy, signed a protocol with the Ministry of Agriculture in Saudi Arabia providing the framework for exports of livestock for breeding purposes. In addition to the specific testing and treatment the livestock must undergo while in New Zealand, the Agreement addresses animal welfare matters upon arrival in Saudi Arabia.
26. New Zealand Federated Farmers Meat Industry Group Chairman, Mr Rick Powdrell, said in April 2015 (see report in Queensland Country Life, 30th April 2015) that he was unaware of any pressure within the New Zealand farming community to restart live exports for slaughter commenting: *"It's all about animal welfare and making sure that the animals reach their destination in a fit and healthy state"*.
27. One of the difficulties inherent in banning live exports from Australia has been the lack of nearby slaughtering facilities which came about due to the progressive closure of abattoirs in the 1980s and 1990s.
28. This has meant that livestock has had to be transported overland by road, sometimes for thousands of kilometres, before reaching an abattoir in Australia. The alternative was to be transported even further by ship for slaughter overseas.
29. In 2010, the Western Australian and Federal governments (through the Rural Industries Research and Development Corporation) jointly conducted a study into the 'Feasibility of Establishing a Northern Western Australian Beef Abattoir'.⁴
30. Key findings of this study included:
 - Access to a processing stream would be of significant benefit to producers in Northern Rangelands, who are exposed to tightening live export market constraints, with Broome being the location that offers the most advantages to producers and processors as the site of a new facility.
 - An industry restructuring effort towards the development of a significant agistment/backgrounding sector would benefit the industry generally, and also provide a more commercially attractive platform for a processing stream.
31. Meanwhile, across the border in the Northern Territory a new privately operated abattoir was built in Livingstone, near Darwin by the Australian Agriculture Company (**AACo**) and was officially opened by the then Prime Minister in February 2015.
32. AACo Chair, Mr Donald McGauchie, said the official opening was a *"very special day for AACo."* He further said:

"Our company has been in business now since 1824 and it's 95 years since our first investment in the Northern Territory".

⁴ ISBN 978-1-74254-179-2

"But we have never seen business opportunities of the magnitude that we're seeing right now.

"Asia's growing middle class is projected to number 3.2 billion people by 2030 and we expect they will double the region's food consumption by the middle of this century.

"As a consequence, we're on the cusp of an export bonanza and AACo wants to see Australia play a very significant part in providing high quality food for that Asian middle class.

"We want to revolutionise the northern beef industry and create a new channel to those that are opening up.

"We want northern Australia to benefit from Asia's growing prosperity and we want, what will be the Asian century, to be Australian agriculture's century as well.⁵

33. It is suggested that building new "state of the art" abattoirs in the north of Australia would create more jobs in areas where new industries and work opportunities are increasingly scarce.
34. It would enable the community appetite for cessation of live animal exports to be satisfied, as well as improving animal welfare standards. It would do so by facilitating the slaughtering of animals as close as possible to where they are kept and avoiding not only live animal exports but also extended overland trips within Australia to distant abattoirs.
35. The Society is of the view that the banning of export of live animals for slaughter overseas, while supporting the development of more abattoirs in the regions near where the cattle are bred (mainly in northern Western Australia, the Northern Territory and Far North Queensland), would assist in addressing community expectations of animal welfare regulation.
36. This also has the potential to *increase* competitiveness for Australian farmers in overseas markets where their packed meat products would presumably be as highly prized as those from New Zealand, with the added benefit of improved employment opportunities where they are most needed in regional Australia.

Question 3 – What are the reform priorities for animal welfare regulations, if any, and have recent reforms, for example in relation to the ESCAS, delivered net benefits to the community?

37. The Society is of the view that the reform priorities for Australia's animal welfare regulatory framework outlined in the *Australian Animal Welfare Strategy and National*

⁵ ABC Rural: 21st February 2015

*Implementation Plan 2010-2014 (the AAWS)*⁶ should be pursued and progressed on a National basis.

38. The primary objective was to promote greater national regulatory consistency by converting the various industry based Model Codes of Practice for the Welfare of Animals into, at least partly, enforceable Australian Standards and Guidelines for the Welfare of Animals.
39. The intention was to improve national consistency in welfare standards and benefit livestock industries by reducing costs of regulatory compliance (particularly for businesses operating across State borders).
40. This process commenced in 2004 but to date only Standards for the land transport of livestock have been fully developed⁷ and not all States and Territories have yet implemented these Standards into law. Standards for the welfare of sheep and cattle have also been developed⁸ but are yet to be implemented at the State and Territory level. New South Wales has already indicated that it does not propose to adopt these standards as mandatory, contrary to the national agreement for all such standards to be regulated under law.
41. The delay in progressing the AAWS initiative may well be attributed to the October 2013 decision of the Federal government to withdraw from national leadership on animal welfare and to cease funding for the AAWS and associated advisory bodies. It is submitted that the Federal government should reverse this decision and resurrect its commitment to funding in order to progress consistency in animal welfare standards and reduce regulatory costs for business.
42. As to recent reforms and in particular the Exporter Supply Chain Assurance System (**ESCAS**), it has to be said that detailed comment on ESCAS (on other than an historical basis) is difficult as it is continually being reformed and revised by the Commonwealth Department of Agriculture (**DA**).
43. Opinions of ESCAS are divided in both those who have had direct contact with the scheme and those who have observed.
44. Generally, ESCAS is viewed as a positive development (and perhaps that would amount to a 'net benefit to the community'). Inevitably, it does not adequately address the issues of concern to those opposed to live exports for slaughter as matter of principle, nor does it achieve the animal welfare standards of those who would not oppose live exports, provided adequate standards are observed.
45. If live exports for slaughter are to continue, it is submitted ESCAS could and should be improved in many respects.

⁶ Australian Government Department of Agriculture and Water Resources: ISBN: 978-1-921575-29-7

⁷ Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock, 2012

⁸ Australian Animal Welfare Standards and Guidelines for Sheep 2016; Australian Animal Welfare Standards and Guidelines for Cattle 2016

46. Currently, ESCAS only applies to cattle and buffalo. Sheep and goats are treated as one or more flocks. This anomaly should be addressed and ESCAS extended to sheep and goats and other animals, such as camels.
47. In addition, for the scheme to gain credibility, the audit process has to be strengthened.
48. Assurances that animal welfare standards must also be a fundamental component of the scheme: without assurances in this regard the industry would be threatened (as the events following the Four Corners TV programme in 2011 of cruelty in Indonesian abattoirs demonstrate).
49. There has been much community debate on the issue and there seems to be an appetite in the community to ban live exports altogether, although plainly some groups in the community hold a contrary view.
50. Even New Zealand, which has not exported live animals for slaughter for some years, will (subject to appropriate arrangements for animal welfare) still export breeding cattle and sheep (for example, to the Middle East).
51. The Society sees other priorities for animal welfare regulations as including the following:
 - a) The introduction of mandatory and enforceable Standards/Codes of practice for the welfare of all production animals (cattle, sheep, fowl etc.) supported by Federal animal welfare legislation and/or legislation in all States and Territories which would enable prosecution and penalties for breaches.
 - b) Prohibition on surgical procedures being done (without anaesthetic) by persons other than registered veterinarians- who are obliged by enforceable professional standards to utilise analgesia.
 - c) An adequate funding regime for prosecution of breaches of animal welfare regulations. As canvassed below, in most States, investigation and prosecution of animal welfare offences is in the hands of local RSPCA branches. State and Territory government funding of local RSPCAs is insufficient which means the RSPCA is forced to raise funds from the community to support its enforcement activities. This means the capacity of RSPCA to monitor animal welfare in all areas, particularly in the context of production animals, is severely limited. Even the best possible regulatory regime would be of limited benefit if the bodies charged with the responsibility of enforcement are not adequately funded to do that in both the metropolitan and rural/agricultural contexts.

Question 4 – How do variations between State and Territory animal welfare regulations affect livestock businesses and/or consumers?

52. Whilst the express purpose of animal welfare legislation across the States and Territories is generally consistent (i.e. to protect welfare of animals and provide for prosecution and penalties in the case of breaches), the detail of the regulations and the manner in which they are implemented and enforced are in the hands of different bodies and government departments in different States and Territories.
53. State governments have entirely different attitudes to the funding of enforcement measures, which is a significant factor in itself.
54. It is clear that the lack of uniform animal welfare regulations adversely affects livestock businesses and consumers alike for various reasons, some of which are outlined below.
55. Firstly, the variations in regulatory regimes and enforcement gives rise to increased costs of compliance for business, particularly in the case of businesses operating across State and Territory borders, which costs are inevitably passed onto consumers by producers.
56. An example of this arises in the case of eggs labelled as 'free range'. There are entirely different approaches evident in the manner in which the issues arising are dealt with by State and Federal Governments.
57. Consumers are prepared to pay more for eggs labelled 'free range' partly because they believe the production hens are treated more ethically and healthily than battery hens and partly because of a perception that 'free range' eggs, as a result, are a healthier option.⁹
58. There have been a handful of successful prosecutions by ACCC under the Commonwealth *Trade Practices Act* (and later the Competition and Consumer Act) of producers claiming their eggs were produced by hens housed in 'free range' conditions. These prosecutions were on the basis that consumers were misled by the labelling to believe that the hens were 'free range', when plainly they were not. However, the regulations as to labelling and the standards which underpin those regulations vary widely between States.
59. As recently as late 2015 the Federal Government called for submissions on a Consultation Paper which postulated various labelling options for eggs claimed to be 'free range'.
60. In 2013 the South Australian Minister for Business Services and Consumers, Mr John Rau, was advocating a different response to the problem.
61. He was propounding the introduction of an industry code, stating that there was strong support from egg producers and the community for a density cap for free-

⁹ Commonwealth Treasury Consultation Paper on Free Range Egg Labelling: October 2015

range eggs of 1,500 hens per hectare. *“When South Australian shoppers buy their free range eggs, they will know they are getting the best,”* Mr Rau said. *“This means that the eggs will come from real free range properties with no more than 1,500 hens per hectare.... In contrast, Queensland free range eggs can be up to 10,000 hens per hectare and no other state provides a legal definition... This gives South Australian egg producers an advantage, as shoppers looking for real free range eggs will buy South Australian eggs more regularly”.*

62. He went on to describe the standards which producers would have to achieve to access the South Australian Free Range accreditation scheme and promised development of an accreditation logo which would appear on egg cartons from producers that met the requirements.
63. Mr Rau stated that an industry code would achieve the desired outcomes of South Australian egg producers and indicated that legislation was not required.¹⁰
64. This is separate to and different in structure to what the Commonwealth has in mind from its discussion paper.
65. Another example of this issue is the varying requirements for the identification of livestock. Taking South Australia as an example, regulation 61 of the *Livestock Regulations 2013 (SA)*, prescribes that a Permanent Identification Device (**PID**) must be fixed to cattle on the off-side ear of the animal. It is an offence to bring an animal in to South Australia unless the animal is identified with a PID.¹¹
66. However, in Victoria, there is no such stringent requirement, only that ‘the prescribed manner of identification for the purposes of section 9 of the Act for any cattle is by means of an ear tag or tail tag ...’¹²
67. This leads to the risk that, for example, a cattle producer in Victoria may place an identification tag on the tail of a beast and then ship it into South Australia where that owner automatically becomes in breach of the local regulations. This is clearly undesirable and is a function of the divergent regulation requirements from State to State.¹³
68. It is clear that requiring livestock producers to be aware of and comply with the differing regulatory regimes across the States and Territories would lead to higher operating costs, greater risks to them from non-compliance and higher prices for consumers.
69. Secondly, businesses operating in jurisdictions with higher animal welfare standards- and/or stronger enforcement procedures (or even higher penalties for breaches) are clearly at a competitive disadvantage to those based in States or Territories with lower standards.

¹⁰ News Release from the Minister’s Office: 24th September 2013

¹¹ *Livestock Regulations 2013 (SA)* regulation 61(2).

¹² *Livestock Disease Control Regulations 2006 (Vic)* reg 8.

¹³ And yet in reversed circumstances a South Australian owner, complying with South Australia identification laws, would not have committed an offence in Victoria by virtue of reg 19 *Livestock Disease Control Regulations 2006 (Vic)*.

70. Thirdly, in addition to competitive disadvantage, jurisdictions where lower standards are required will inevitably tarnish the reputation of the relevant industries as poor and outdated husbandry practices are exposed by the media or animal welfare organisations.
71. Fourthly, regulatory and enforcement variations will inevitably create confusion for consumers for whom it will be difficult to gain sufficient information and assurances in relation to livestock production practices in the State or Territory where they live- or from where animal products they may consume are produced.
72. For all these reasons, The Society supports a national approach to animal welfare policy, standards and ideally funding of enforcement.
73. In conclusion, the following statement from the Federal Parliament summarises the position:

“Diverse and incongruent state and territorial legislation minimise the opportunity for creating binding codes of practice, reduce knowledge-sharing, render comprehensive monitoring impossible, ensure “uniform standards” remain lower common denominator, and put comparative state-by-state reviews out of the question. But the greatest loss perhaps is in the area of statistical gathering, for without this there will never be a national database on animal experimentation, which would enable researchers to share information across institutions and state and territory borders.”¹⁴

Question 5 – What are the costs and benefits of national animal welfare standards? Are there any barriers to implementing national standards?

74. There is already federal legislation that covers the welfare of animals involved in the live animal export trade, wildlife protection, quarantine and health.¹⁵
75. The concept of national animal welfare legislation is not novel. On 20 June 2005, former Senator Andrew Bartlett from Queensland introduced the *National Animal Welfare Bill 2005*. In the second reading speech, Senator Bartlett said:

“The Bill will provide the means by which the care, protection and use of animals can be coordinated, monitored and reviewed nationally via the establishment of a National Animal Welfare Authority that has the power to achieve a reasonable balance between the welfare needs of animals and the interests of people who use animals for a livelihood; to reflect human community attitudes and expectations as to how animals should be treated; and to track advances in the scientific knowledge of animal biology, psychology and behaviour in respect to their needs and care.”¹⁶

¹⁴ Commonwealth of Australia, Senate, *Debates*, 20 June 2005, page 52 (Andrew Bartlett).

¹⁵ See, for example, *Quarantine Act 1908 (Cth)*, *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, *Export Control Act 1982 (Cth)*, *Navigation Act 1912 (Cth)*.

¹⁶ Commonwealth of Australia, Senate, *Debates*, 20 June 2005, page 51 (Andrew Bartlett).

76. In his second reading speech, Senator Bartlett described animal welfare as practised in Australia as a “dog’s breakfast of policies from state to state”¹⁷ with a “hodge-podge of state and territory animal welfare legislation”¹⁸. He said:

*“Commonwealth legislation would ensure consistency, effectiveness and efficiency. For the first time, states and territories, along with the federal Government, would be able to engage in mutually beneficial transactions that would have an immediate impact on Australia’s ever expanding international trade and treaties involving domestic animals, livestock and wildlife. Wherever there are inconsistencies, there are unnecessary complications, confusion, duplications and inefficiencies, none of which are conducive to improved productivity and economic growth, or to optimum animal welfare outcomes.”*¹⁹

77. The Society is of the view that only the Commonwealth has the resources needed to establish and fund national animal welfare standards and this, coupled with a national statutory authority to enforce such standards (save those necessarily subject to State jurisdiction such as companion animals owned by individuals) would be the best and most effective way of proceeding to appropriately regulate the area.²⁰
78. A similar case was made for the protections of the environment with the creation of the *Environment Protection and Biodiversity Conservation Act 1999*.²¹ It is arguable that the power to make laws that govern animal welfare at a Federal level can be derived from, *inter alia*, the trade and commerce power²² or the Corporations power.²³
79. White argues that while the Australian Constitution is largely silent, the Commonwealth has increasingly gained influence over this aspect of agriculture. Despite that influence, the Commonwealth has done little to change the status quo, which seems to be based on the erroneous presumption that production animals do not feel pain in the same way that companion animals do.²⁴
80. While the AAWS was developed by the Commonwealth in consultation with the States and Territories, it is now managed by the individual States and Territories.²⁵
81. It is worth noting here that any sanctions imposed for non-compliance with ESCAS is not enforceable under the AAWS, and it appears that the Commonwealth now has little involvement in its operation.

¹⁷ Ibid.

¹⁸ Ibid, page 52.

¹⁹ Ibid, page 53.

²⁰ Graeme McEwen, *Animal Law: Principles and Frontiers*, 2011, page 223 < <http://bawp.org.au/wp-content/uploads/2013/07/eBook-FINAL.pdf>>

²¹ Commenced on 16 July 2000.

²² *Commonwealth of Australia Constitution Act 1901 (Cth)*, s 51(i).

²³ Ibid, s 51(xx).

²⁴ White, S. “Regulation of Animal Welfare in Australia and the Emergent Commonwealth: Entrenching the Traditional Approach of the States and Territories or Laying the Ground for Reform?” [2007] FedLawRw 14; (2007) 35(3) Federal Law Review 347

²⁵ <http://www.australiananimalwelfare.com.au/content/about-aaws>

82. A 2009 review of the AAWS found that *“(t)he program essentially is at the stage of having established itself, harvested some early gains and now has to do the hard yards to achieve sustainable outcomes.”*²⁶
83. The Society submits implementation of national standards for production animals would simplify (and thus reduce the costs of) compliance practices for producers who may conduct business across State and Territory borders.
84. For those involved in the export of livestock (if live exports are not banned) consistent standards and regulations applicable from the farm or feed lot through to port would also simplify matters and reduce costs.
85. The now defunct body, Animal Health Australia, previously identified *“(e)xcessive regulatory burden arising from regulatory differences between the jurisdictions and unnecessary existing standards...”*²⁷ as one of the imperatives for implementation of national standards.
86. The Society considers it unfortunate that the AAWS is now managed by the States and Territories²⁸ with the Federal Government now having little involvement.
87. It is apparent that the Commonwealth has previously laid the framework to become involved in implementing standards for animal welfare and has the capacity to continue to do so. A 2009 review of the AAWS found that *“(t)he program essentially is at the stage of having established itself, harvested some early gains and now has to do the hard yards to achieve sustainable outcomes.”*²⁹ One of the barriers to success identified at the time of the review was lack of quantifiable data about animal welfare.³⁰
88. A more significant barrier was the lack of long term funding.³¹ Animal Health Australia also noted at the time of the review that funding limitations prevented it from conducting any review for ostriches, emus, buffalo, deer and feral animals.³²
89. There are numerous benefits to implementing national standards, not the least of which is to simplify matters for producers and consumers by applying a common standard, and to ensure consistency in enforcement and penalties for breach.
90. Recognition of the need for national standards was identified over 10 years ago and led to the establishment of the AAWS.
91. There is no cogent reason why the Federal Government cannot, and should not, continue to support the AAWS in order to establish national standards and guidelines.

²⁶ Gemmell, B (2009) Review of the Australian Animal Welfare Strategy

<http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/Gemmell%20review-aaws.pdf>

²⁷ Proposed Australian Animal Welfare Standards and Guidelines: Cattle, Regulation Impact Statement (2013)

²⁸ <http://www.australiananimalwelfare.com.au/content/about-aaws>

²⁹ Gemmell, B (2009) Review of the Australian Animal Welfare Strategy

<http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/Gemmell%20review-aaws.pdf>

³⁰ Gemmell, above n 7, p 2.

³¹ Ibid, p 17.

³² Animal Welfare Standards and Guidelines Development Business Plan (2009).

Question 6 – Are animal welfare regulations appropriately enforced?

92. *“Laws or ordinances unobserved, or partially attended to, had better never have been made”.*

George Washington, letter to James Madison, Mar. 31, 1787

93. While the animal welfare laws of all states and territories provide for breaches to be investigated and prosecuted, it does not follow that these laws are vigorously investigated and enforced. In New South Wales, one Magistrate stated:

“[i]n more than 25 years sitting as a Magistrate in both city and country areas I can count on the fingers of one hand the number of prosecutions brought for cruelty to animals used in agriculture. I would be surprised if this reflected the extent of animal cruelty in that area of agriculture.”³³

94. Enforcement of laws for the protection of animals requires potential cruelty offences to be detected and reported to authorities empowered to investigate potential breaches and then prosecute. This presents particular challenges in the context of production animals because most offences against farm animals take place on private property, in remote locations far removed from the public eye.³⁴ In many cases, investigators have to rely on whistle-blowers or ‘tip-offs’ from third parties who may have unlawfully trespassed on farming land.³⁵
95. The Society is of the view that Animal Welfare regulations around Australia are largely not appropriately enforced. Enforcement arrangements plainly vary from State to State, but in most places enforcement responsibilities are shared between the relevant government department and the local RSPCA. Each State and Territory RSPCA receives an annual grant from the government, but the relative size of the grant compared to State/Territory human and animal populations varies widely and typically amounts to only a small percentage of the actual cost to the RSPCA of operating inspectorates and conducting prosecutions.
96. This means the ability of the RSPCA in all States and Territories to investigate reports of animal cruelty and prosecute offenders relies to a significant degree on donations from the public. The RSPCA is a charitable organisation with other responsibilities (such as operating animal shelters, conducting education campaigns and advocacy in the area of animal welfare). It is unable to respond adequately to all cruelty reports (particularly in rural areas) - nor conduct routine inspections of intensive animal production facilities on more than the most superficial level due to financial constraints.

³³ S Schreiner, “Sentencing Animal Cruelty” paper presented at *Cruelty to Animals: A Human Problem* (RSPCA Scientific Seminar, Canberra, 22 February 2005), cited in H Kotzman, *How are the Animals Faring? A Report on the Strengths, Limitations and Deficiencies of Animal Welfare Legislation in Victoria* (The Greens, October 2008), p. 30.

³⁴ D Cao, *Animal Law in Australia and New Zealand*, Lawbook Co., 2010, p. 216.

³⁵ *Ibid.*

97. It is no surprise perhaps that a system of law enforcement which relies to any extent upon funding being derived from donations to a charitable organisations fails to achieve an adequate level of enforcement of the law.
98. Thus it is clear that the most significant problem arising is inadequate funding of both the RSPCA and the government departments otherwise responsible for enforcement.
99. A recent independent review of the administration of the *Animal Welfare Act* in Western Australia found that the Department of Agriculture and Food was “*under-resourced to deliver a level of service to meet community and industry expectations*”.³⁶
100. This situation is replicated in all States and Territories. Animal Welfare regulations are not appropriately enforced and it will not be possible for them to be appropriately enforced unless and until the Federal, State and/or Territory governments make appropriate funding commitments.

The Society would be pleased to be of further assistance.

Yours sincerely

David R A Caruso
PRESIDENT

³⁶ Easton, Lynsey, Mezzatesta & Mercy ‘A Report on an independent review of the investment and administration of the Animal Welfare Act 2002 in Western Australia’; October 2015.