



**Submission to the Productivity Commission**

***Regulation of Australian Agriculture***

**Draft Report**

***18 August 2016***

The Animal Law Institute is a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.

## Introduction

1. The Animal Law Institute (**ALI**) welcomes the opportunity to make this submission to the Productivity Commission (**Commission**) in response to the Regulation of Australian Agriculture Draft Report (**Report**).
2. ALI is a registered charity and a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system. ALI is a member of peak bodies the Victorian Federation of Community Legal Centres and the National Association of Community Legal Centres.
3. This submission is in relation to two important matters covered in the Report, namely the regulation of farm animal welfare (chapter 5) and labelling of free-range eggs (chapter 9.3, regulation of food labelling).

## Regulation of farm animal welfare

### Background

The extent of the problems associated with the current regulation of Australian animal agriculture is, in our view, substantial. Recent data suggests that there are probably over 750 million animals involved in Australian agriculture, either as food animals, or producing commodities like eggs and dairy products.<sup>1</sup> There are significant community concerns about practices such as intensive farming of chickens and pigs, surgical mutilations (such as castration) without anaesthesia or pain relief and killing of unwanted animals (such as male chicks and ‘bobby’ calves). However, as evidenced by the Report, there is little effective monitoring of farm animal welfare by those tasked with enforcing the law due to some extent to the limited powers of effective monitoring (for instance, only Tasmania has random inspections).

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<sup>1</sup> comprising 29 million cattle, 2.3 million pigs, 73 million sheep: ABARES (2015) *Agricultural Commodity Statistics*; 630 million meat chickens (at least – that is the number slaughtered each year) and 26 million egg laying chickens: [www.chicken.org.au](http://www.chicken.org.au); [www.aecl.org](http://www.aecl.org).

### *Structure of an independent farm animal welfare body*

ALI responds to particular matters in respect of the Commission's draft recommendations 5.1 and 5.2 and information request 5.1. These recommendations and the information request are as follows:

#### *DRAFT RECOMMENDATION 5.1*

*The Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, an independent body tasked with developing national standards and guidelines for farm animal welfare should be established.*

*The body should be responsible for determining if new standards are required and, if so, for managing the regulatory impact assessment process for the proposed standards. It should include an animal science and community ethics advisory committee to provide independent evidence on animal welfare science and research on community values.*

#### *INFORMATION REQUEST 5.1*

*The Commission is seeking feedback on:*

- the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare*
- what the body's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom)*
- what processes the body should use to inform and gauge community values on farm animal welfare*
- how such a body should be funded.*

#### *DRAFT RECOMMENDATION 5.2*

*State and territory governments should review their monitoring and enforcement functions for farm animal welfare and make necessary changes so that:*

- there is separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions*

- *a transparent process is in place for publicly reporting on monitoring and enforcement activities*
- *adequate resourcing is available to support an effective discharge of monitoring and enforcement activities.*

*State and territory governments should also consider recognising industry quality assurance schemes as a means of achieving compliance with farm animal welfare standards where the scheme seeks to ensure compliance (at a minimum) with standards in law, and involves independent and transparent auditing arrangements.*

ALI strongly agrees with the Commission's recommendation that the Australian Government should establish an independent body with responsibility for animal welfare matters in respect of establishing, and managing the processes associated with establishing, agricultural animal welfare standards. ALI also agrees with the proposed responsibilities of such a body. That is, ALI is supportive of the view that the proposed independent body be involved with establishing standards that operate in conjunction with the State and Territory anti-cruelty legislation. However, ALI does not think that the independent body should be involved in the enforcement of the anti-cruelty legislation, or the standards adopted in respect of that legislation.

ALI thinks that the Australian Animal Welfare Strategy (**AAWS**) represents a template for how not to set up such a body. ALI understands that the hallmark of AAWS was the involvement of very large numbers of 'stakeholders', with many meetings and much talk, with little useful outcome. The whole process was dominated by agricultural industry interests, being the majority of 'stakeholders' with the consequence that there was little objectivity. The hangover from the AAWS process can be seen in the latest animal welfare Codes for sheep and cattle. In our view these represent a retrograde step, as they make provisions such as being able to 'reasonably' strike, punch or kick an animal, or to throw or drop sheep from 1.5 metres or less. These 'welfare' requirements may suit the agricultural industry, but we doubt that these requirements represent practices acceptable to the public, let alone animal welfare scientists without vested interests in the agricultural industry.

Our view is that the the proposed body should be structured to ensure and maintain its independence and neutrality. That means it should not include 'stakeholders', such as industry representatives and animal welfare groups. That is not to say, of course, that it cannot consult with such bodies. Instead, the body should be structured with public servants chosen for their relevant

expertise and background. This could include economists, animal welfare scientists, veterinarians and lawyers provided that the main emphasis is on the independence of the personnel who play critical roles within this proposed body. This does not mean that persons with former associations with such 'stakeholders' cannot play a part as public servants, as in effect being in that position will ensure lack of bias as part of their terms of employment.

As mentioned in the Report, there is a perception that government departments associated with primary industry are biased in favour of those who use animals to make money. To counter this perception, we suggest any independent body be part of a Commonwealth department not associated with the farming industry, such as either the Attorney-General's Department or the Department of the Environment and Energy.

We also think that any independent body should be structured in a way which ensures the assessment of scientific and ethical issues independently of the positions of both industry and animal welfare groups, as we recognise that the bias of industry lies in its participants' desire to make profits, while the bias of both industry and animal welfare groups may not be based on objective science. Our view is that the model of the European Veterinary Scientific Committee is one that should be considered in order to meet the objective of impartiality.

ALI notes that the Commission in draft recommendation 5.1 has said that scientific principles should guide the establishment of farm animal standards. ALI stresses that it is imperative that the Australian Government ensures that these principles are determined by a cohort of scientists with impartial interests to avoid simply handing the standard-setting process over to agricultural industry interests. It is a standard industry riposte to proposals for improved standards that such proposals are based on 'emotion rather than science'. However, close examination of the science which the agricultural industry would like to see used reveals that frequently science is commissioned and paid for by the agricultural industry. In the review of the Pig Code, for example, there was heavy reliance by industry on the scientific studies of Professor Paul Hemsworth and his colleagues. Arguably that reliance resulted in the adoption of the use of sow stalls in the most recent Pig Code. But Professor Hemsworth's work on pigs appears to be almost, if not entirely, funded by the pig industry.<sup>2</sup>

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<sup>2</sup> see Caulfield M (2012) *Science and Sense*. Voiceless, Paddington NSW.

Another example is the study of treatment of Australian cattle in Indonesia, funded by Meat and Livestock Australia, which found the welfare of the animals was 'generally good'. Clearly this was not so.<sup>3</sup> This illustrates the simple point that it is crucial to avoid bias in deciding which scientific principles should be used in seeking that guidance regarding standards. This may be a particular problem in Australia, where the research of many scientists in areas relevant to the welfare of farm animals is directly or indirectly funded by industry. To counter this, in ALI's view it would be advisable to insist that experts consulted by the independent body should include a majority of truly independent scientists, both in determining scientific guiding principles and in relation to the establishment of standards. ALI recognises that this may necessitate consulting overseas experts.

Although we agree that the envisaged independent body should be tasked to provide an objective scientific view of any particular animal welfare issue, we are uncomfortable about the idea that 'international scientific standards' should apply. This is because the international scientific standards adopted are often the OIE's recommendations concerning animal welfare. While OIE recommendations set minimum standards, they do not set out best practice. They are well known to be just recommendations developed so that they can be applied even in countries which have no tradition of animal welfare and where there is no legislative framework promoting good animal welfare. Accordingly, ALI is of the view that Australia's standards should be set higher than the minimum standards enunciated in the OIE recommendations and indeed should meet community expectations that Australian domestic animal welfare standards should apply to all farm animals.

We also commend the Commission on remarking in the Report that 'animal welfare and production do not always go hand in hand'. The opposite perception is a fundamental scientific misconception which has been pushed hard by industry players and indeed has featured in previous animal welfare Code development processes. It illustrates the need for truly independent scientific input in animal welfare matters.

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<sup>3</sup> For a detailed analysis, see B Jones and J Davies *Backlash* Finlay Lloyd Publishers (2016).

### *Outcome based approach*

In the Report the Commission mentions using an ‘outcomes-based approach’ in assessing whether animal welfare is adequate, and in developing standards. ALI understands that this approach is endorsed by the agricultural industry, along with quality assurance programmes and use of international standards. This approach can of course be useful. But ALI is of the view that it should not be used where there are clear quantifiable measures related to animal welfare which can be used as the basis of standards. An obvious example is temperature and humidity in environments where animals are housed.

### *Responsibilities of the independent body*

In addition to the development of standards, we think that the revision of existing standards should be a major priority for the independent body. In our view, public opinion is strongly shifting towards the view that farm animals deserve better protection through welfare laws, Codes and guidelines and that the current system is not satisfactory. For example, after the approval of continued use of sow stalls in the last iteration of the Pig Code, the industry, facing pressure from retailers such as Coles, announced a ‘voluntary ban’ by 2017. We note in passing that this response was actually misleading, as the industry has no intention of entirely banning sow stalls; it took a complaint to the ACCC to get the industry to admit it was actually proposing a partial removal. The other obvious example of changed community expectations is in relation to the way egg laying chickens are housed. The latest figures from the Australian Egg Corporation show that free range eggs account for about 41% of eggs by volume, but about 51% by value. The average unit sale value for cage eggs was said to be \$3.25, while the value for free range eggs was \$5.40. Thus, consumers are prepared to pay significantly more for what they perceive as improved animal welfare.

We acknowledge that there are substantial difficulties facing a Commonwealth initiative in establishing standards in respect of animal welfare that operate alongside existing anti-cruelty legislation, when animal welfare is essentially the concern of the States and Territories. However, there are precedents for States and Territories working effectively with the Commonwealth to find a workable solution in similar circumstances. In our view, the entire gamut of issues relating to farm animal welfare should be the responsibility of the proposed independent body. There should be a cooperative legislative scheme drawn up by the Commonwealth and the State and Territories which

in essence allows the Commonwealth to deal with farm animals and issues concerning them Australia-wide. However, we do not think such a scheme should deal with matters of animal cruelty, which we regard as quite distinct from the question of farm animal welfare. Issues of animal cruelty (including the enforcement of any contravention of the standards established at a national level by the proposed independent body) should remain the responsibility of each State and Territory.

The idea that industry quality assurance schemes may have a place in maintaining and improving animal welfare standards for farm animals is not entirely unreasonable. However, this must be completely predicated on a system of independent monitoring, coupled with unannounced inspections of facilities. This again should be a responsibility assumed by the Commonwealth.

It is a vexed question whether the proposed independent body should make decisions, for example on animal welfare Codes, or whether it should make recommendations. If it is the latter, then the recommendations should be to the relevant federal Minister. However, as the Report has pointed out, it has often been the case that recommendations are undermined by the agricultural industry subsequently getting the ear of the relevant Minister. This was the case with the Tasmanian Government's decision to ban sow stalls, where the Tasmanian Government initially announced that it would phase out the use of sow stalls in 2012. However, when the industry representative body was able to persuade the Minister to allow use of stalls at the beginning and end of pregnancy the Tasmanian Government continued to allow use sow stalls on Tasmanian farms.<sup>4</sup> We submit this change in policy had no scientific basis and is an example which supports the view that simply empowering the independent body to make recommendations will not be sufficient in removing impartiality in the process of establishing standards. ALI suggests the answer to this is to include legislative provisions which require the relevant Minister to consult with the independent body before implementing a position which is at odds with the body's initial recommendation. While the Minister will always have the discretion to go against the body's recommendations, at least such a mechanism would ensure he or she had independent advice on any industry proposal.

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<sup>4</sup> Malcolm Caulfield, personal communication.



### *Gauging community values*

We agree with the suggestion in the Report that the proposed independent body should also seek to gauge public opinion on particular animal welfare issues of concern. In our view there is an almost total lack of reliable data. We also agree that relying on submissions from the public is likely to be an unreliable way of assessing public opinion on a matter, as those making submissions are unlikely to comprise a sample representative of the Australian community. The proposed independent body should instead have the power to commission independent professional surveys which are undertaken to obtain a more accurate understanding of the views of a cross section of Australians.

### *Funding*

We recognise that funding the proposed independent body is a difficult issue. Farmers, who understandably want to minimise costs, will be reluctant to pay for the independent body. We acknowledge that funding the body from public funds will be politically unattractive. But at the same time, we think that improving animal welfare for farm animals in Australia will have substantial indirect benefits, not least of which is to Australia's reputation as an exporting country. For this reason, we recommend that the proposed independent body be funded by the Commonwealth. As things stand, in our view it is likely that some of Australia's animal welfare positions could result in Australian products being less attractive in overseas markets. An obvious example is wool, given the reluctance of the industry to stand by its undertaking to phase out mulesing. The likely effect of this is that wool buyers in some countries will simply not buy Australian wool and follow overseas retailers who have already boycotted Australian wool for this reason (such as H&M, Abercrombie & Fitch and Hugo Boss).

### **Live export**

The Report accepts the Department of Agriculture and Water Resources' statement that a preference for freshly slaughtered meat and lack of suitable chilled infrastructure in destination countries will always result in a demand for live animals. With reliance on this statement, the Report claims that animal welfare outcomes could be made worse if live export from Australia is stopped, simply because the gap will be filled by countries with lower welfare standards. We believe that this

is an industry mantra, which is ethically and morally unjustifiable; indeed the evidence is that Australian involvement in importing countries does not improve animal welfare standards, as seen from the decade-long investment in Indonesia prior to the *Four Corners* revelations.<sup>5</sup> We were disappointed to see that sentiment repeated in the Report without further empirical evidence:

- in support of the Department of Agriculture and Water Resources' assumptions;
- explaining from which countries the current destination countries would source live animals if the Australian live export industry ceased; and
- the overall cost to the Australian economy if the live export trade ceased in the short to medium terms with efforts to increase the export of the carcass-only trade.

We note that assumptions like these are relied on in support of the continuation of the live export trade under the ESCAS model. Again, this reflects an industry mantra; the reality in the modern world is that if live export ceases, it is quite likely that meat of some sort will substitute.<sup>6</sup> However, ALI considers it prudent to first test this assumption through the commission of an independent report. We note that the Commission suggests that an independent body adopt the responsibilities associated with monitoring ESCAS (p 222). We recommend that the independent body also be empowered to undertake an independent feasibility study of phasing out the Australian live export trade and replacing it with the carcass only trade in the short to medium term and that its role in monitoring the live export trade be developed in response to the findings of this study.

We think it is important to test the feasibility of the live export trade from an economic perspective as it is difficult to justify the continuation of the live export trade in light of the following:

- The negative animal welfare impacts on farm animals both during and after the journey are well documented. We agree with Vets Against Live Export that long distance live export voyages (that is, voyages of over 3 or 4 days) are per se unacceptable by virtue of the negative animal welfare impacts, including heat stress, trauma and starvation. These voyages are morally unjustifiable on this basis alone, regardless of what happens to the animals in importing countries. It is possible, we think, to improve things sufficiently on short voyages to make them acceptable.

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<sup>5</sup> See the analysis in Jones and Davies, footnote 3.

<sup>6</sup> See for example *Australian lamb carcass exports have boomed since live export suspension* Sheep Central, 8 August 2016 (<http://www.sheepcentral.com/australian-lamb-carcass-exports-have-boomed-since-live-export-suspension/>); *Indian beef is about to capture a large slice of the Indonesian market* Beef Central, 19 July 2016 (<http://www.beefcentral.com/live-export/indian-beef-is-about-to-capture-a-large-slice-of-the-indonesian-market/>).

But what is utterly essential is that there should be a veterinarian on each ship, and those veterinarians should be independent of the exporter. We think this can be achieved if these vets are registered with and appointed by the proposed independent body.

- The Report has discussed the legal issues associated with trying to monitor and enforce the treatment of animals once they arrive in the destination country under ESCAS and so they will not be repeated here. We are of the view that even with increased funding and vigour to 'enforce' compliance with ESCAS the continuation of this system will continue to result in further shocking revelations which will justifiably inflame public opinion.

We were also disappointed the Commission did not probe further into an obvious productivity matter, namely the 'stealing' of animals from the domestic slaughter chain by live export. It has become apparent that this is happening on an increasing basis, with domestic processors reducing the number of shifts operated by abattoirs. The live exporters have always maintained that the animals which go to live export are not wanted by domestic processors. But, particularly with cattle, where the price per animal is at an all time high, there is a developing situation where exporters are starting to impact on the availability of animals for domestic abattoirs.<sup>7</sup> This necessarily replaces an animal which, when processed, results in a significant economic and employment multiplier effect, compared to an animal which when exported contributes nothing further to the Australian economy once it has left the country. Perhaps this could be a matter that could be explored further by an independent report.

### Free range egg labelling

ALI agrees that the national free range egg labelling information standard announced by the Australian State and Territory consumer affairs ministers in March 2016 be revisited before being adopted to ensure that it is consistent with the production systems in the revised Poultry Code (which is expected in 2017). ALI's view is predicated on the basis that it makes sense to both producers and consumers for the labelling and production of free range eggs to be consistent. Also,

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<sup>7</sup> See for example *More pain for processors as beef prices continue to sizzle* ABC Online 7 March 2016 (<http://www.abc.net.au/news/2016-03-04/nsw-beef-market-trends/7217890>). This includes a quote from former AACo head David Farley expressly referring to competition between Australian abattoirs and live export for cattle, and the need to invest more in those abattoirs.

ALI assumes that any proposed revisions to the current Poultry Code will be implemented after consideration of reliable scientific evidence that the proposed change will improve animal welfare. At this stage there is a dearth of reliable data on free range production systems; we agree that what data there is suggests there may be issues with free range systems, such as high mortality and cannibalism, which need to be addressed. Equally though, the egg laying industry has presented a biased case that a stocking density higher than that in the current Poultry Code is not associated with decreased animal welfare. For instance, in presenting its argument to the Tasmanian Animal Welfare Advisory Committee that 2 chickens per square metre was an acceptable stocking density, it used a paper from the Scottish Agricultural College based on studies of birds in large cages housed indoors. That itself is sufficient reason for viewing its conclusions with scepticism. But the paper did not assess any welfare measures; it merely reported on the extent to which the birds kept apart.<sup>8</sup> If the stocking density proposed by the information standard was supported by similar data, we think that this is also a sufficient reason to review the proposed information standard in light of the revised Poultry Code.

We thank the Commission for considering our submission.

Should the Commission have any questions regarding this submission, please do not hesitate to contact The Animal Law Institute via email at [policy@ali.org.au](mailto:policy@ali.org.au).

Yours sincerely

The Animal Law Institute Ltd.

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