

## PORTFOLIO COMMITTEE NO. 2 - HEALTH

### INQUIRY INTO USE OF PRIMATES AND OTHER ANIMALS IN MEDICAL RESEARCH IN NEW SOUTH WALES

HEARING – 16 MAY 2022

#### SUPPLEMENTARY QUESTIONS TO ANIMAL DEFENDERS OFFICE

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**1. You note in your submission that “ADO volunteers include animal-welfare category members of animal experimentation ethics committees”.**

**a. Do you find that in some instances, Category C and D members are not listened to, or that they may not carry the same weight as other committee members? Given they are often outnumbered on a committee, could there be issues with ensuring their contributions are implemented?**

I am currently a Category C member of a university Animal Experimentation Ethics Committee (“AEEC”). The university has a large biomedical research program.

Category C and D members are outnumbered by AEEC members associated with the research institution (eg researchers, veterinarians, lab attendants, the Chair, and the committee secretariat). As outnumbered lay members of the AEEC, we are at a particular disadvantage because, despite being required to do so<sup>1</sup>, researchers frequently do not present their research proposals in plain English, so lay members are unable to assess the proposal properly or carry out our responsibilities under the Code<sup>2</sup>:

1.3 A judgement as to whether a proposed use of animals is ethically acceptable must be based on information that demonstrates the [governing] principles in Clause 1.1, and must balance whether the potential effects on the wellbeing of the animals involved is justified by the potential benefits.

Sometimes the views of lay members are listened to, but often mere lip service is given to our views by acknowledging them but then putting them to one side and never doing anything about them. Or concerns from Category C and D members about animal usage are purportedly ‘addressed’ by the institutional members who merely seek to justify and endorse the status quo (being a very high usage of animals).

**b. In your experience, do you believe Category C and D members of animal ethics committee receive adequate training and support?**

I received no training or support when I joined the AEEC in 2016. As a result it took me a long time to get a sense of how everything worked and what my role should be, and how as a Category C

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<sup>1</sup> The Code, clause 2.4.12.

<sup>2</sup> National Health and Medical Research Council, *Australian code for the care and use of animals for scientific purposes*, 2013; updated 1 June 2021, 8th edition (“the Code”).

member of an animal research institution's AEEC I might best be able to protect the interests of the research animals. Over the 5 years I have been a member of the AEEC there has been very little training or liaising with Category C members from other AEECs.

**c. Would you support mandatory training for Category C and D members, supplied by the Animal Research Review Panel - do you think this would be helpful?**

I would support mandatory training for Category C and D members if it gives these members a greater understanding of the scope for contributing to and influencing the committee, their rights and obligations under the Code, and researchers' obligations under the Code regarding communicating with the AEEC and lay members in particular.

**d. What other reforms would you like to see in the Animal Ethics Committee system – do you think it is working effectively?**

I would like to see a tightening of the definition of a Category C member. Currently Category C members must have a 'demonstrable commitment to, and established experience in, furthering the welfare of animals,' or be a veterinarian (clause 2.2.4(iii) of the Code). The Code specifies that the person 'should, where possible, be selected on the basis of active membership of, and endorsement by, such an organisation'. Recently, however, our AEEC recruited a Category C member who is an industry vet and not endorsed by an animal protection organisation. In my view, Category C members must be endorsed by an animal protection organisation to ensure an adequate representation on the AEEC of persons who prioritise animal interests over those of their users.

An expert in animal alternatives should be a mandatory member of AEECs. Committees should also and be required to consider researchers' efforts to find alternatives and/or contribute to research on alternatives. Otherwise it is too easy for protocols to be approved without any consideration of alternatives, and/or acceptance of the researchers' copied and pasted standard words about the absence of alternatives.

The requirement for researchers to communicate in plain and clear English must be better enforced. Failing to do so seriously disadvantages lay members of an AEEC and makes it almost impossible to fulfil our obligations under the Code.

Finally, researchers should be required to provide the AEEC with an *independent* assessment of the researcher's proposed justification for the impact the research will have on the animals. Currently it is too easy for researchers to make sweeping statements about how the research will save the world, or at least humanity, and for these statements to be unverified and unsupported.

**Q2. The Committee has heard from research institutions who claim they are very transparent when it comes to animal research, and then we have submissions from animal protections organisations such as ADO criticising the lack of transparency. What do you think is going on here- why are we hearing two separate stories?**

It is not appropriate to expect an objective assessment of transparency about animal research from research institutions themselves. A preferred way to assess transparency is to seek the views of members of the community to find out how aware they are of animal research, the conditions in which animals are kept, and the severity of the procedures inflicted on the animals. When the ADO undertakes animal law outreach in the community, which includes raising awareness about the use of animals in research in NSW, we frequently receive feedback from members of the community that they have no idea that such practices occur in Australia.

Despite what institutions may assert, the research industry as a whole accepts that there is a problem with transparency, as demonstrated by the 'Openness Agreement on Animal Research in Australia' initiative.<sup>3</sup>

In our view it is in the interests of research institutions not to be transparent about their animal research as their social licence to operate would be at risk if the community knew the numbers of animals who suffer for negligible scientific benefit and the extent of animal suffering involved. The ADO points out that a social licence based on community ignorance is not a social licence at all.

Another explanation for the divergence of views may be what is regarded as being transparent. For example, animal protection organisations and the general community rely on publicly available data when considering transparency. Research institutions, on the other hand, may consider their disclosures to industry regulators and government departments to be transparent. Unfortunately, however, most information provided in this way is not available to the public.

The ADO therefore submits that the NSW regulatory system should mandate consistent public disclosure of animal-use data by research institutions. Where information is sensitive or risks the privacy of individuals, data could be depersonalised before being made public.

Access to animal-use data is a matter of public interest for various reasons. Not only is some of the research funded by tax-payer money, but also the industry must be held to account to ensure that the Three Rs ("3Rs") are being implemented.<sup>4</sup> Without access to meaningful data, it is impossible to monitor whether research in NSW is meeting the governing principles of refining, reducing and replacing the use of animals in research.

**Q3. One of the researchers who attended the inquiry made the following comparison between animal research and slavery: *"I think it is a cop-out for us as a society if we ban something here but allow it to happen elsewhere. We do not have slavery here, but you can pay money and have your stuff made somewhere else by slavery. In the same way, we would be doing a disservice and being inhumane to the use of animals for research if we allowed that back-door approach"*. What is your response to this argument? Do you think this is a legitimate comparison?**

Everyone agrees that slavery is morally opprobrious. The essence of the researcher's 'slavery' argument appears to be that because something immoral such as slavery is done somewhere else, we should not ban it here and instead we should do it ourselves. Taken to its logical conclusion, the argument is suggesting that we should institute slavery here because it takes place elsewhere. On this argument 'our' slavery would be somehow less inhumane, but of course it would still be slavery and therefore morally unacceptable.

The argument is a desperate and preposterous clutching at straws motivated by self-interest. It is so manifestly ridiculous that any thinking person would reject it out of hand.

In our view we cannot control what other societies do but we can and must control what we do when it comes to morally opprobrious activities, and many would include invasive animal research in that category.

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<sup>3</sup> <https://anzccart.adelaide.edu.au/openness-agreement-public-consultation>.

<sup>4</sup> The 3Rs are set out in the first principle outlined in the Code: clause 1.1.

**Q4. You argue in your submission that we need to be legislating for alternatives, rather than leaving it up to the “*discretion of researchers, institutions, and animal experimentation ethics committees to determine whether alternatives are developed and used*”. You have also recommended that it be a legislated requirement that “*individuals applying for an animal research authority must include detailed particulars of their consideration of non-animal alternatives in their application*”. Can you explain why you think legislative intervention is necessary at this point – is the current system not working?**

- a) What other kind of legislation or Government action (if any) do you think would be most effective in encouraging the development and use of alternatives?**
- b) Would you support some kind of time-frame for phasing out the use of animals being outlined in legislation or at the Government-policy level, as has happened in some other jurisdictions? If so, why?**

From my perspective as a Category C member of a university AEEC for over 5 years, the current system is not working when it comes to requiring researchers to consider alternatives. While researchers are required to address the issue on their research project applications, they frequently copy and paste standard wording stating that there are no alternatives currently available but that they are monitoring the literature. The AEEC can do nothing about this, short of asking further questions on each individual protocol and asking the researcher to provide details. The onus should, however, be on the researcher to provide sufficient details to enable the AEEC to judge whether the researcher has made a genuine attempt to implement the 3Rs. Research applications could also require researchers to explain why they have not implemented each of the 3Rs in the particular project. Without legislated requirements, the current framework is not robust enough to ensure that consideration of the 3Rs is adequate.

The ADO submits that, unless the development of alternatives is mandated and at least partially funded by the NSW Government, there is little incentive for researchers to embrace alternative methods in an industry that is traditionally based on animal-use.

The ADO also submits that researchers are restricted by institutionalised acceptance of animal-use methods as valid, and potential pressure from peers and research institutions to maintain the status quo.

The ADO notes that there are several ways NSW could support the development and use of alternatives. As a primary measure, the ADO recommends legislating to require considerations of, training in, and development of alternatives. This would strengthen the requirement to implement the 3Rs.

As additional measures, the ADO encourages NSW to recognise that research on a global level is moving towards the development of alternatives, and there is an opportunity for NSW to become a leader in innovation regarding alternatives. Given the inevitability of alternatives matching if not surpassing animal-use, it would be entirely reasonable for the NSW Government to establish a dedicated centre for the development of alternatives and funding for specific research projects, scholarships and organisations.

The ADO agrees that a timeline for phasing out the use of animals should be implemented to ensure that meaningful and real steps are taken towards achieving this outcome. In terms of suggesting a timeframe, the ADO defers to the expertise of others for what would be a realistic and achievable

timeframe. The ADO notes, however, that various measures may require shorter transition periods. For example, restrictions or ministerial checks on the use of primates could be introduced with almost immediate effect, as was the case in New Zealand and Austria (see our written submission for details).

**Q5. In your submission, you raise some concerns about hatching projects. Can you please outline the animal welfare implications of these experiments, and why you would like to see them banned (or at least subject to animal ethics approval)? Do you know why they are currently exempt from requiring animal ethics approval?**

In NSW, hatching projects are exempt from specific ethics approval if they are considered ‘a procedure, test, experiment, inquiry, investigation or study of a kind described as Category 1, Category 2 or Category 3 activities in the document entitled *SACEC approved activities and their respective categories*’.<sup>5</sup> Breeding animals in a school (other than native animals) is a Category 3 activity.<sup>6</sup>

The supply of animals for such studies is also exempt.<sup>7</sup>

The ADO is not aware of why hatching projects do not require specific approval in NSW. We note, however, that in at least three other jurisdictions (Victoria<sup>8</sup>, Queensland<sup>9</sup>, Western Australia<sup>10</sup>), AEEC approval is required for each hatching project, and alternatives are encouraged.

The exemption of individual hatching projects from requiring specific AEEC approval in NSW is a concern because of the well-known animal welfare implications of such projects. These include:

- Having untrained and/or poorly qualified staff responsible for the young and vulnerable animals. This may result in inappropriate routine care, an inability to notice illness or injury, and a failure to provide appropriate veterinary care. Companies that supply the eggs advertise these projects as being easy to set up and run<sup>11</sup>, providing a false sense of security that nothing will go wrong.
- Poor hygiene causing illness or disease.
- Young students being ‘rough’ when handling young chicks, causing injury or death. In Queensland, younger children are not permitted to handle chicks in schools.<sup>12</sup>
- Inappropriate or inadequate food and water.
- Chicks being subjected to stress in a classroom setting. Classrooms can be loud and bright. The enclosure may not have suitable areas for chicks to get away from the surrounding noise.
- Responsibility for the care of the chicks outside of school hours eg over weekends and public holidays.

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<sup>5</sup> [Schools Animal Care and Ethics Committee \(SACEC\)](#).

<sup>6</sup> <https://nswschoolanimals.com/compliance/approved-activities/>.

<sup>7</sup> *Animal Research Regulation 2021* (NSW), Schedule 3(8).

<sup>8</sup> <https://www2.education.vic.gov.au/pal/teaching-with-animals/guidance/vsaec-application-and-approval-process#when-is-vsaec-approval-required>.

<sup>9</sup> <https://education.qld.gov.au/curriculum/Documents/sop-poultry-egg-hatching.pdf>.

<sup>10</sup> <https://myresources.education.wa.edu.au/programs/animal-ethics/operating-procedures>.

<sup>11</sup> See for example Australian Eggs: ‘All you have to do is watch the chicks hatch and grow!’, <https://www.australianeggs.org.au/education/chicks-in-your-school>; Chicks ‘R’ Us: “‘What do we have to do?’ Very little. Once we set up you just sit back and enjoy.”, <http://www.chicksrus.com.au/FAQs.html>.

<sup>12</sup> <https://education.qld.gov.au/curriculum/Documents/sop-poultry-egg-hatching.pdf>.

- The fate of the chicks after the projects end. This is a particular problem given that approximately 50% will be roosters, who are difficult to rehome because they are noisy and unsuitable for urban schools or backyards.

Given these welfare implications and the ready availability of alternatives, the ADO submits that hatching projects should be phased out in NSW. As an interim measure during the transition to prohibition, the activity should be rated as a category 4 or 5 activity involving the use of animals in schools, thereby requiring an application to the NSW Schools Animal Care and Ethics Committee to allow the animals to be used.

**Q6. We have received evidence that animal research institutions are only inspected every 3-4 years, and generally they are given notice prior to inspections. Do you think this is sufficient oversight to protect animals used in research? If not, why not?**

Carrying out pre-arranged inspections of research institutions every 3-4 years is manifestly inadequate to monitor the care of the many (often thousands) of animals kept at an institution. While there are some checks built into the regulatory framework, such as the requirement under the Code to report and take action regarding unexpected adverse events,<sup>13</sup> these requirements are inherently retrospective and rely on self-reporting by researchers. The ADO submits that unannounced inspections at least once a year would be the minimum that would be required to give a basic level of assurance that an institution is complying with animal welfare requirements.

**Q7. A number of industry bodies have argued that animal research in NSW is highly regulated. Would you agree with this? What do you see as some of the shortcomings? Do you see the industry as being essentially self-regulated – and if so, do you have concerns about this?**

The regulatory framework in NSW covering animal research is what is known as ‘enforced self-regulation’.<sup>14</sup> That is, while the legislation sets out requirements for carrying out the research, it is largely left to the industry itself to ensure the requirements are followed, and there is minimal oversight or intervention by external enforcement agencies (eg government departments). Researchers are required to obtain AEEC approval, but AEECs are established by the research institutions themselves and dominated by industry participants. There is little to no public reporting of research refused or modified by AEECs, or outcomes of AEEC inspections of institutions and laboratories, or AEEC or institutional responses to unexpected adverse events. Complaints are rare and prosecutions for non-compliance with regulatory requirements are even rarer.<sup>15</sup> Self-regulation also carries a high risk of perceived and actual conflicts of interest as it depends on research institutions monitoring their compliance with regulatory requirements through their own AEECs.

The ADO therefore submits that the claim that animal research is highly regulated in NSW is counterfactual and misleading.

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<sup>13</sup> Clauses 2.3.2(v), 2.3.24.

<sup>14</sup> E Ellis, *Australian Animal Law. Context and Critique*, Sydney University Press, 2022, p272.

<sup>15</sup> NSW DPI, *Animal Research Review Panel Annual Report 2020-21*, 2.12 (p20): ‘In the 2020-21 reporting period, no statutory complaints were made under the Act.’  
[https://www.animaethics.org.au/data/assets/pdf\\_file/0006/1388121/Annual-Report-2020-21.pdf](https://www.animaethics.org.au/data/assets/pdf_file/0006/1388121/Annual-Report-2020-21.pdf).