

Submission
No 7

**INQUIRY INTO PREVENTION OF CRUELTY TO ANIMALS
AMENDMENT (RESTRICTIONS ON STOCK ANIMAL
PROCEDURES) BILL 2019**

Organisation: Animal Welfare Lawyers

Date Received: 31 July 2020



A nation and its moral progress can be judged by the way its animals are treated: Mahatma Gandhi

31 July 2020

Legislative Council, NSW
Portfolio Committee No. 4 – Industry
By email: PortfolioCommittee4@parliament.nsw.gov.au

Dear Committee members

Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019

Introduction

Thank you for inviting submissions in your inquiry into the Prevention of *Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019* and permitting our submission by email.

We, Animal Welfare Lawyers,¹ write in support of the Bill.

Submission on s24

We support the proposed amendments to immediately require the administration of analgesic or other appropriate pain relief for procedures set out in section 24 of the Act. We do so on 3 bases.

The pain² caused to farm animals by procedures such as mulesing is unnecessary given the availability of pain relief, as noted in the second reading speech of the Hon Mark Pearson MLC.³ Sentient beings should be treated humanely in any ethical society. Such a standard is more easily met by the application of pain relief to invasive procedures. The often-drawn distinction between companion animals and farm animals in this respect is becoming less justifiable. We note that pain relief is required in Victoria under regulations introduced in 2019.⁴

Secondly, there is increasing concern about farm animal welfare in the general community and businesses such as major international retailers are increasingly responding to such

¹ Animal Welfare Lawyers is a group of lawyers - some members of the Law Council of Australia, some also members of State law bodies - with an interest in the welfare of animals and expertise across a range of legal areas. Our purposes are:

(a) to provide advocacy on animal welfare issues; and
(b) to promote community awareness of animal welfare; and
(c) to promote changes to the law that will benefit animals and/or advocacy by animal welfare advocates

² Defined in the Act to include suffering and distress: sec 4

³ <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-80191'>

⁴ Prevention of Cruelty to Animals Regulations 2019, reg 8(2)



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concerns.⁵ Therefore, without the improvement in animal welfare that the Bill requires, there is an increasing risk for Australian agricultural industries. Invasive procedures without pain management are a serious threat to livestock industries' social licence.

Thirdly, as the second reading speech also notes, the Bill helps clarify the position for farmers so reducing the risk of prosecution. The defence is available if an accused can satisfy the court that the procedure was performed '*in a manner that inflicted no unnecessary pain upon the animal*'. The language is ambiguous because "unnecessary" is undefined.⁶ One scholar thinks that, when sec 24 is combined with sec 4(2),⁷ the provision becomes circular in that it would allow existing routine husbandry practices rather than be standard-setting.⁸ If that is so, the Bill would correct that problem. If it is not so, then in our view without the amendment proposed by the Bill the risk of prosecution remains, particularly with the availability and affordability of pain relief these days. The proposed amendment should help redirect the concluding clause in sec 24 to the way in which the operation itself is performed. This is because the concluding words of sec 24 would read "*and with the administration of an analgesic or other appropriate form of pain relief and otherwise in a manner that inflicted no unnecessary pain upon the animal*".

Submission on sec 23B

Mulesing causes pain⁹ and is unnecessary. It has been banned in New Zealand.¹⁰ Other major wool producing countries, such as Uruguay, South Africa and Argentina either have no need for mulesing or have banned the practice.¹¹

Alternatives for management of flystrike include:

- ensuring shearing and crutching are timed to reduce flystrike
- strategic application of preventative chemical treatments to prevent flystrike

⁵ Four Paws International, '100 Textile Brands against Mulesing' . <https://www.four-paws.org/our-stories/press-releases/100-textile-brands-against-mulesing>

⁶ See for example, "Standards and Standard-Setting in Companion Animal Protection", S White, (2016) 38(4) Sydney Law Review 463: <http://classic.austlii.edu.au/au/journals/SydLawRw/2016/21.html>

⁷ Relevantly, "*For the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:*

...(d) inflicted with pain"

⁸ Making sausages and law: the failure of animal welfare laws to protect both animals and fundamental tenets of Australia's legal system, Ellis EJ, Uni of Wollongong
<https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1103&context=lhapapers>

⁹ Lee C and Fisher AD, 'Welfare Consequences of Mulesing of Sheep' (2007) 85(3) *Australian Veterinary Journal* 89; CJC Phillips, 'A Review of Mulesing and Other Methods to Control Flystrike (Cutaneous Myiasis) in Sheep' (2009) 18(2) *Animal Welfare* 113; Andrew D Fisher, 'Addressing Pain Caused by Mulesing in Sheep' (2011) 135(3) *Applied Animal Behaviour Science* 232.

¹⁰ Animal Welfare (Care and Procedures) Regulations 2018, reg 59

¹¹ See article in The Australian Business Review, "Australia now the black sheep on mulesing", 28/7/20



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- effective control of scouring and the control of intestinal worms
- genetic improvements to breed sheep with low wrinkle, fewer dags, less urine stain and less wool around the breech and
- effective tail docking.”¹²

Also, mulesing is controversial, and has been for decades. It represents a serious reputational risk for the Australian wool industry. In 1989 the Federal Senate Select Committee on Animal Welfare said the practice “*attracted the most vigorous condemnation from critics*” and said further that it “*should and would be replaced as soon as acceptable and effective alternatives were found.*”¹³ Such alternatives now exist.

In 2004, mulesing was cast into the international spotlight by PETA¹⁴ and numerous surveys and studies have found it is one of the most important animal welfare issues.¹⁵ And, as noted above, businesses are increasingly sensitive to such community concerns. Indeed, the Responsible Wool Standard certification (which is voluntary) prohibits mulesing.¹⁶

Accordingly, we support prohibiting mulesing with effect from 1 January 2022. While perhaps the prohibition could occur sooner, we recognise that (notwithstanding that the industry has had a great deal of time since first promising to phase it out) it may take some time for all sheep farmers to adapt their practices. A delayed outcome is better than the risk that farmers unable to adapt immediately leave sheep to suffer flystrike.

¹² Office of the Associate Minister of Agriculture NZ, *Animal Welfare Regulations for Submission to Executive Council (Cabinet Paper)* (No Sub17-0064), p44. <https://www.agriculture.govt.nz/dmsdocument/28002-animal-welfare-regulations-for-submission-to-executive-council-cabinet-paper>

¹³ Federal Senate Select Committee on Animal Welfare, *Sheep Husbandry* (4 October 1989) 56.

¹⁴ People for the Ethical Treatment of Animals

¹⁵ See for example, CJC Phillips et al, ‘Perceptions of the Importance of Different Welfare Issues in Livestock Production’ (2009) 3(8) *Animal* 1152, 1160. Grahame Coleman, ‘Consumer and Societal Expectations for Sheep Products’ in *Advances in Sheep Welfare* (Elsevier, 2017) 37; Grahame Coleman and Samia Toukhsati, *Consumer Attitudes and Behaviour Relevant to the Red Meat Industry* (Meat & Livestock Australia Limited No B.AHW.0093, Monash University, June 2006). Futureye, *Social Licence Review (Report Commissioned by Meat and Livestock Australia)* (2014) 3 <https://www.sustainableaustralianbeef.com.au/21632/documents/48221> Futureye, *Commodity or Sentient Being? Australia’s Shifting Mindset on Farm Animal Welfare* (2018) <http://www.agriculture.gov.au/SiteCollectionDocuments/animal/farm-animal-welfare.pdf>

¹⁶ Standard AW3.11. See <https://textileexchange.org/wp-content/uploads/2020/03/RWS-101a-V2.0-Responsible-Wool-Standard.pdf>



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Conclusion

Pain relief is an improvement on the existing standards, but it is our view that it is **not sufficient** to address the animal welfare problem of mulesing, or the concerns of citizens and the international community. Ultimately mulesing must be prohibited.

Moreover, as well as the interim requirement for pain relief (that is, until the prohibition) there should be enforceable guidelines about how pain relief is administered to ensure that it is effective pre- and post-procedure. And, of course, regulatory approval of suitable pain relief is essential.

Lastly, we recommend the Act be amended to cover not just surgical mulesing but all forms of breech modification. Neither the Bill nor the Act define mulesing and it would be unfortunate if NSW farmers moved to other painful forms of breech modification such as chemical mulesing or steining.¹⁷ In New Zealand the prohibition is described as *“by any method, remove the breech, tail skin folds, or tail skin wrinkles of a sheep.”*¹⁸

Thank you for considering our submission. We are available and happy to meet with you or to answer any questions. My email is .

Yours sincerely

ALAN SHAW on behalf of Animal Welfare Lawyers

¹⁷ For example, <https://www.rspca.org.au/media-centre/news/2019/wool-industry-promotion-steining-solution-mulesing-premature-rspca>

¹⁸ Reg 59(1)