

Submission  
No 21

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

**Organisation:** Animal Defenders Office Inc.

**Date Received:** 3 August 2020

---



**Animal Defenders Office**  
*Using the law to protect animals*

ABN: 12837355070 | Member: CLCNSW Inc. | GPO Box 2259 Canberra ACT 2601 | [www.ado.org.au](http://www.ado.org.au) | [contact@ado.org.au](mailto:contact@ado.org.au)  
The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

---

The Director  
Portfolio Committee No.4—Industry  
Parliament House  
Macquarie Street  
Sydney NSW 2000

**By email:** [portfoliocommittee4@parliament.nsw.gov.au](mailto:portfoliocommittee4@parliament.nsw.gov.au)

Dear Committee

**Submission to the NSW Legislative Council’s Portfolio Committee No.4—Industry on the provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019**

Thank you for the opportunity to provide a submission to the inquiry into the provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019 (NSW) by the NSW Legislative Council’s Portfolio Committee No.4—Industry.

*About the Animal Defenders Office*

The Animal Defenders Office (“ADO”) is a nationally accredited non-profit community legal centre that specialises in animal law. The ADO is run exclusively by volunteers and offers pro bono legal assistance to individuals and groups wishing to protect animals.

The ADO also produces information to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc, the peak body representing community legal centres in New South Wales.

**GENERAL COMMENTS**

This submission is about the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019 (“the Bill”).

The ADO strongly supports the Bill and recommends that it be passed.

The ADO submits that the measures proposed in the Bill are reasonable. Our comments in support of our submission are set out below.

## MULESING

The Bill would make mulesing a sheep a criminal offence under proposed section 23B to be inserted into the *Prevention of Cruelty to Animals Act 1979* (NSW) (“POCTA Act”).

### *Background*

Australia is the world’s largest wool producer, with the merino breed being the most common in the industry.<sup>1</sup>

Mulesing was first developed in the 1930s as a cheap way of dealing with flystrike in Australian merinos.<sup>2</sup> In lay terms, it consists of slicing flesh from the backsides of lambs. The procedure is regarded as ‘painful’, with ‘acute pain’ that is ‘long lasting’, and resulting in ‘poor welfare both during and after the procedure’.<sup>3</sup> The procedure is commonly performed without anaesthesia or pain relief.<sup>4</sup> This has led to it coming under intense public international scrutiny due to the significant animal welfare concerns associated with it.

By the beginning of this century, even the Australian wool industry reportedly considered mulesing the most important welfare issue that it faced.<sup>5</sup> Around this time, a survey found that 98% of producers were still mulesing their lambs.<sup>6</sup>

International opposition to the practice on animal welfare grounds grew during the first decade of this century. It came to a head in 2004 when the world’s largest animal rights organisation, People for the Ethical Treatment of Animals (“PETA”), launched a campaign calling for an international boycott of Australian wool products. The campaign included installing large graphic billboards over gridlocked freeways in the US, reportedly seen by almost 100,000 US motorists and pedestrians a day.<sup>7</sup> This led to the Australian Wool Innovation (“AWI”)<sup>8</sup> commencing proceedings in the Federal Court against PETA in 2005.<sup>9</sup> In 2007 the parties reached a compromise. PETA agreed to stop the boycott until the end of 2010. For its part, the Australian wool industry agreed to invest in developing alternatives to mulesing with a view to phasing out the practice by the end of 2010.<sup>10</sup>

---

<sup>1</sup> International Wool Textile Organisation, *Specifications for Wool Sheep Welfare*, 2020, p3.

<sup>2</sup> RJ Dixon (Subdean Animal Welfare, Faculty of Veterinary Science), ‘Animal welfare and emerging issues of Veterinary Science’, Draft Report for the National Farmers Federation, University of Sydney, 2005.

<sup>3</sup> RSPCA Australia (2020), ‘What is the RSPCA’s view on mulesing and flystrike prevention in sheep’, updated 30 April 2020, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-mulesing-and-flystrike-prevention-in-sheep/>.

<sup>4</sup> Ibid.

<sup>5</sup> GM Cronin et al, ‘Identifying animal welfare issues for sheep in Australia’, *Wool Technology and Sheep Breeding*, 2002 50: 534-540.

<sup>6</sup> RJ Dixon (2005), p10, op.cit. FN 2.

<sup>7</sup> ‘Australian wool boycotted after cruelty claim’, Sydney Morning Herald, 23 Dec 2004, <https://www.smh.com.au/business/australian-wool-boycotted-after-cruelty-claim-20041223-gdkde4.html>.

<sup>8</sup> The Australian Wool Innovation describes itself as: ‘a not-for-profit enterprise that conducts research, development and marketing along the worldwide supply chain of Australian wool to increase the long-term profitability of Australian woolgrowers’, <https://www.wool.com/>.

<sup>9</sup> W Carlisle, ‘PETA and the Wool’, *Background Briefing*, ABC, 6 March 2005, <https://www.abc.net.au/radionational/programs/backgroundbriefing/peta-and-the-wool/3445402>.

<sup>10</sup> The Australian Senate, Standing Committee on Economics, ‘Trade Practices Amendment (Small Business Protection) Bill 2007’ (Report), Sept 2007, par. 3.15,

However, 2010 came and went without the industry phasing out the practice,<sup>11</sup> and mulesing is still used by Australian wool producers today. The Australian wool industry failed to honour its part of the agreement with PETA. In broader terms, the Australian wool industry failed to show global leadership in animal welfare, and continues to do so by refusing to phase out the practice by its own accord.<sup>12</sup> This is despite recent claims that the industry has 'invested \$33 million on flystrike prevention since 2005' and 'is working towards finding a suitable alternative to mulesing'.<sup>13</sup>

The Legislation Review Committee (NSW) considered the proposed offence in section 23B but referred 'to Parliament the question of whether the new offence is reasonable in the circumstances'.<sup>14</sup>

### *Mulesing—prohibition vs industry self-regulation*

Unfortunately, it is clear that the Australian wool industry cannot and will not phase out the practice of mulesing by its own initiative.

The ADO submits that the industry is structurally incapable of phasing out the practice itself, because it will always prioritise economic outcomes over animal welfare. The industry's priorities are illustrated in the following media reports about Australian wool growers:<sup>15</sup>

Mr Langley [who has his own flock of Merinos] started using anaesthetic pain relief when it was released onto the market, at a cost of about 70 cents per sheep.

He hoped it would set his wool apart in the marketplace, but found buyers were not willing to pay any extra.

So he stopped.

"We stopped for the fact that it was an additional cost," he said.

...

Mr Small [a Victorian wool producer] conceded farmers who do use pain relief were not being paid any extra than those who did not and in fact, his neighbour gave up the practice because there were no premiums.

In October 2017 the Chair of the AWI, Walter Merriman, was asked in a Senate Estimates hearing about alternatives to mulesing. He stated that 'The genetic solution has been there for some 15 years or more and it hasn't been picked up... That's because people

---

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Completed\\_inquiries/2004-07/tp\\_protection/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Completed_inquiries/2004-07/tp_protection/report/index).

<sup>11</sup> RSPCA Australia (2020) reports that in 2016-17 it was estimated that the majority of the 13.5 million lambs in the wool industry had been mulesed, op.cit FN 3.

<sup>12</sup> A Bernasconi, 'Mulesing ban attempt by NSW Animal Justice Party reignites debate and pressure on wool industry', NSW Country Hour, ABC News, 31 July 2020, <https://www.abc.net.au/news/2020-07-30/mulesing-ban-attempt-by-nsw-animal-justice-party/12503440>.

<sup>13</sup> H Renault, 'Wool buyer warns rising demand for non mulesed wool will affect Australian growers still using the practice,' ABC Rural, 4 March 2016, <https://www.abc.net.au/news/rural/2016-03-04/wool-welfare-demands-to-affect-growers/7220472> and D Grindlay, 'Global wool industry reviews mulesing standards, considers mandatory pain relief', ABC Rural, 13 April 2016, <https://www.abc.net.au/news/rural/2016-04-13/global-wool-industry-reviews-mulesing-standards-pain-relief/7323830>.

<sup>14</sup> Legislation Review Committee, *Legislation Review Digest*, No. 6/57, October 2019, Parliament NSW, p2.

<sup>15</sup> D Grindlay (2016), op.cit. FN 13.

[ie producers] have looked at it and said, 'Uh-uh, that's not for me...'.<sup>16</sup> When asked how the alternative operates, Mr Merriman stated, 'they're plain-bodied sheep and you just have to crutch them more and put more chemical on them, and obviously a lot of growers aren't prepared to do that.'<sup>17</sup>

This prioritisation of financial over animal-welfare considerations is a fundamental and entrenched obstacle to the industry phasing out mulesing of its own accord. It must be recognised and accepted that the industry, the primary purpose of which is to generate profits from using sheep to produce wool, will not phase out a practice that producers find cheaper than alternatives.

For this reason, the ADO submits that the practice should be banned by the NSW Parliament, rather than wait for industry to phase the practice out.<sup>18</sup> The Australian wool industry has consistently failed to do this, even when it publicly pledged to the national and international community that it would phase the practice out by a certain date. The ADO therefore submits the proposed offence in section 23B is reasonable in the circumstances.

#### *Mulesing restrictions—legislative precedents*

The ADO submits that banning mulesing in NSW is reasonable, as other wool-producing jurisdictions have banned the practice.

New Zealand is a wool-producing nation. It began phasing out mulesing in 2007.<sup>19</sup>

In 2018 a legislative ban on mulesing came into effect via clause 59 in the *Animal Welfare (Care and Procedures) Regulations 2018* (NZ):<sup>20</sup>

#### **59 Prohibition on mulesing sheep**

- (1) A person must not, by any method, remove the breech, tail skin folds, or tail skin wrinkles of a sheep.
- (2) A person who fails to comply with subclause (1) commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

Following the commencement of the ban, New Zealand has continued to have a thriving wool industry, as reported in 2020 by the International Wool Textile Organisation:

New Zealand is the third largest producer of wool and is also the largest producer of strong wool used in interior textiles. New Zealand has more than 23,000 farms that grow wool from approximately 27 million sheep, amounting to over six sheep per head of population.<sup>21</sup>

---

<sup>16</sup> Senate Estimates hearings, Rural and Regional Affairs and Transport Legislation Committee, 24 October 2017.

<sup>17</sup> Ibid.

<sup>18</sup> A Bernasconi, 'Mulesing ban attempt by NSW Animal Justice Party reignites debate and pressure on wool industry', NSW Country Hour, ABC News, 31 July 2020, <https://www.abc.net.au/news/2020-07-30/mulesing-ban-attempt-by-nsw-animal-justice-party/12503440>.

<sup>19</sup> K Frost, 'New Zealand prohibits the practice of mulesing in sheep', *Farm Online National*, 10 Sept 2018, <https://www.farmonline.com.au/story/5635654/new-zealand-bans-mulesing/>.

<sup>20</sup> <https://tinyurl.com/y4mwf85q>.

<sup>21</sup> International Wool Textile Organisation, *Specifications for Wool Sheep Welfare*, 2020, p4.

### *Mulesing: prohibition vs pain relief*

In December 2019 Victoria's animal welfare legislation was amended to make it a criminal offence to mules a sheep without using pain relief:

A person must not mules a sheep unless the sheep is administered with a pain relief product that has been registered for use on sheep by the Australian Pesticides and Veterinary Medicines Authority.

Penalty: 20 penalty units [currently \$3,304.40].<sup>22</sup>

The new requirement came into effect on 1 July 2020.<sup>23</sup>

The ADO submits that the new requirement in Victoria is recognition by a state government that the Australian wool industry cannot be relied upon to transition away from mulesing or even away from mulesing without pain relief.

While the Victorian requirement for pain relief is theoretically an improvement in terms of animal welfare, the ADO supports a complete ban as proposed in the Bill. The ADO submits that monitoring compliance with a requirement to administer pain relief would be difficult, especially determining whether *sufficient* pain relief has been administered not only at the time of the procedure but also for the *length of time* the lamb would suffer pain due to the procedure. As mentioned previously, the 'acute pain' associated with the mulesing procedure is 'long lasting... from several days to several weeks'.<sup>24</sup> The main pain relief used on mulesed lambs is Tri-Solfen.<sup>25</sup> It is advertised as 'providing relief of pain for at least 24 hours following mulesing...'.<sup>26</sup> According to other estimates it only lasts 'four to six hours' and 'once the product had worn off, there would still be considerable pain experienced'.<sup>27</sup> Some experts recommend that to provide adequate pain relief, producers need to administer two products: 'for mulesing, Tri-Solfen is the drug of choice to get them through the immediate pain but combine that with Buccalgesic or Metacam for longer-term benefits'.<sup>28</sup> It is not clear whether using Tri-Solfen would be enough to meet a legislative requirement to administer pain relief (such as the Victorian requirement), or whether producers would be required to administer multiple pain-relief products to achieve the 'longer-term benefits'.

The ADO submits that the uncertainty associated with a requirement to administer pain relief to mulesed sheep would be avoided if a complete ban on the procedure were to be implemented instead.

### *Innovation: humane and non-animal fibre*

Since the Australian wool industry failed to honour its agreement to phase out mulesing by 2010, PETA has been working with some of the largest retailers around the world which are

---

<sup>22</sup> *Prevention of Cruelty to Animals Regulations 2019*, subreg. 8(2).

<sup>23</sup> *Ibid*, subreg. 3(2).

<sup>24</sup> RSPCA Australia (2020), *op.cit* FN 3.

<sup>25</sup> A Verley, C von Horchner, 'Mulesing pain relief is now mandatory in Victoria', ABC Rural, 1 July 2020, <https://www.abc.net.au/news/rural/2020-07-01/pain-relief-is-now-mandatory-for-mulesing-in-victoria/12405162>.

<sup>26</sup> <https://www.farmerswarehouse.com.au>.

<sup>27</sup> J Mitchell (2020), 'Choosing the right pain relief for your flock', *Farm Weekly*, 15 July 2020, <https://www.farmweekly.com.au/story/6831234/choosing-the-right-pain-relief-product-for-your-flock/?cs=5184>.

<sup>28</sup> *Ibid*.

making welfare and environmental issues a priority.<sup>29</sup> Major brands are continuing to be encouraged to buy only non-mulesed or cease-mulesed wool and, increasingly, non-animal fibres.<sup>30</sup>

The international wool industry has been warning its Australian counterpart that it will be left behind if it continues to rely on mulesing. In 2016 Italian wool buyer Modiano was ‘warning Australian wool growers that they’ll fall further behind their competitors if the industry doesn’t change its approach to animal welfare’.<sup>31</sup>

The ADO submits that a ban on mulesing is reasonable because it would assist the Australian wool industry to survive into the future by becoming a progressive, sustainable and competitive industry.

*Other matters*

#### Liability

It is not clear if the proposed offence in section 23B is a strict liability offence. The ADO would support the new offence being a strict liability offence in line with other animal cruelty offences in Part 2 (‘Offences’) of the POCTA Act.

#### Penalty

The proposed maximum penalty amount in subs. 23B(1) is ‘50 penalty units [\$5,500] or imprisonment for 6 months, or both’. This is in line with other cruelty offences in Part 2 (‘Offences’) of the POCTA Act, including for the core animal cruelty offence in section 5 of the Act. While this is the lowest maximum penalty amount in Australia for the offence of animal cruelty simpliciter and should be increased,<sup>32</sup> the ADO supports the proposed penalty for the new offence of mulesing on the grounds that it is internally consistent.

The ADO notes that the proposed penalty in subs. 23B(1) applies only to individuals, and not also to corporations as per other cruelty offences in Part 2 (‘Offences’) of the POCTA Act. It should perhaps be clarified in the explanatory material why the penalty provision has been drafted in this way.

### **ANIMAL CRUELTY—DEFENCE—ANALGESIC FOR CERTAIN PROCEDURES**

Currently par. 24(1)(a) of the POCTA Act allows the following industry practices to be done to farm animals ‘in a manner that inflicted no unnecessary pain upon the animal’:

- Ear-marking or ear-tagging
- Branding
- Castrating a pig < 2 months old
- Castrating cattle, sheep or goat < 6 months old
- Dehorning a goat < 1 month old
- Dehorning cattle < 12 months old

---

<sup>29</sup> People for the Ethical Treatment of Animals, ‘Mulesing – A Barbaric and Unnecessary Cruelty’, <https://www.peta.org.au/issues/clothing/cruelty-wool/mulesing-barbaric-unnecessary-cruelty/>.

<sup>30</sup> H Renault (2016), op.cit FN 13.

<sup>31</sup> Ibid.

<sup>32</sup> See ‘Penalties for animal cruelty and neglect in Australian jurisdictions’ (as at March 2020), on the ADO’s website: <https://www.ado.org.au/penalties-for-animal-cruelty-and-ne>.



- Tailing sheep < 6 months old
- Mulesing sheep < 12 months old

Without this provision, these practices would be criminal offences. Paragraph 24(1)(a) therefore operates as defences to these potential offences.<sup>33</sup> The implication is also that the listed procedures cause pain (which is why doing them would be a cruelty offence were it not for the defences in par. 24(1)(a)).

The Bill proposes to limit the defences available under par. 24(1)(a) by requiring that pain relief be used when carrying out the listed procedures on an animal.

The Legislation Review Committee (NSW) considered the proposed limitation, but referred 'the matter to Parliament to consider whether the limitation on the defences is reasonable in the circumstances'.<sup>34</sup>

The ADO supports the proposed limitation on the defences in par. 24(1)(a) and considers it to be reasonable for the following reasons.

#### *Causing pain*

The listed procedures are among the 'husbandry procedures' that, according to the RSPCA, 'may often cause pain, suffering or distress'.<sup>35</sup> The RSPCA states that '[a]ppropriate pain-relieving products and treatments, and/or anaesthetics, must be used' for 'any procedure that may cause pain to the animals'.<sup>36</sup>

Pain relief is reportedly becoming increasingly affordable and available.<sup>37</sup>

The ADO therefore submits that limiting the defences in par. 24(1)(a) by requiring pain relief for the exempted procedures is reasonable as the procedures cause pain, suffering or distress to the animal upon whom they are performed, and the pain would be easily avoided if readily available and affordable pain relief were administered.

#### *Existing limitations on the defences*

The defences in par. 24(1)(a) are already subject to certain limitations. The defences are only available if the procedures are carried out in relation to certain animals (ie farmed animals) of certain ages (eg 'less than 6 months of age'). For example, if a person were to undertake the usual pig castration procedure (covered in subpar. 24(1)(a)(ii)) on a pig aged three months, or on a dog of any age, the defence would not be available.

The ADO submits that it is reasonable to limit the defences in par. 24(1)(a) by requiring pain relief as proposed in the Bill, because the defences are already subject to several other limitations.

---

<sup>33</sup> The Bill would also amend the provision by removing 'mulesing' altogether from section 24.

<sup>34</sup> Legislation Review Committee, *Legislation Review Digest*, No. 6/57, October 2019, Parliament NSW, p3.

<sup>35</sup> RSPCA Australia (2019), 'Why are painful procedures performed without anaesthetic?', updated October 2019, <https://kb.rspca.org.au/knowledge-base/why-are-painful-procedures-performed-without-anaesthetic/>.

<sup>36</sup> *Ibid.*

<sup>37</sup> See for example J Mitchell (2020), FN 27.



### *Undertaking procedures without pain relief—current risk of prosecution*

As mentioned, the defences in par. 24(1)(a) are available only if the procedures do not cause ‘unnecessary pain’. Whether pain inflicted on a farmed animal is ‘unnecessary’ is usually determined with reference to standard industry practices. It is standard industry practice to undertake the listed procedures without administering pain relief to the animal, thereby causing the animal considerable pain. However, because causing the animal significant pain when undertaking these procedures is standard practice, the pain would be regarded as ‘necessary’ and would not constitute an animal cruelty offence.

As mentioned earlier, however, pain relief is becoming increasingly affordable and available.<sup>38</sup> A court may therefore view a person’s failure to administer pain relief to an animal during and after the listed procedures as causing ‘unnecessary’ pain, because the pain could easily have been avoided by the use of pain relief. Therefore, whether or not the Bill is passed, farmers are at risk of being charged with animal cruelty for inflicting unnecessary pain on an animal when undertaking the listed procedures without pain relief.

The ADO supports the Bill’s proposed limitation on the defences in par. 24(1)(a) because it will clarify what is meant by ‘unnecessary pain’, thereby providing certainty for those carrying out the procedures.

### *Pain relief restrictions—legislative precedents*

The ADO submits that limiting the defences in par. 24(1)(a) is reasonable because other jurisdictions have already implemented similar restrictions in legislation.

For example, New Zealand requires pain relief when a pig is castrated (*Animal Welfare (Care and Procedures) Regulations 2018* (NZ), clause 55):

#### **55 Castrating pigs**

- (1) A person must not castrate a pig unless—
  - (a) the person is a veterinarian, or a veterinary student under the direct supervision of a veterinarian throughout the procedure; and
  - (b) **the pig is given pain relief at the time of the procedure.**
- (2) The owner of, and every person in charge of, a pig must not allow the pig to be castrated in breach of subclause (1).
- (3) A person who fails to comply with this regulation commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

[*emphasis added*]

The same Regulations require pain relief when dehorning cattle:

#### **58 Dehorning cattle beasts**

- (1) A person must not dehorn a cattle beast unless **throughout the procedure the cattle beast is under the influence of an appropriately placed and effective local anaesthetic that is authorised by a veterinarian for the purpose of the procedure.** [*emphasis added*]
- (2) The owner of, and every person in charge of, a cattle beast must not allow the beast to be dehorned in breach of subclause (1).
- (3) A person who dehorn a cattle beast must—
  - (a) be experienced with, or have received training in, the correct use of the method being used; and

---

<sup>38</sup> J Mitchell (2020), FN 27.

- (b) be able to recognise early signs of significant distress, injury, or ill-health so that the person can take prompt remedial action or seek advice.
- (4) The owner of, and every person in charge of, a cattle beast that is to be dehorned must ensure that the health and welfare needs of the animal are met during the procedure and recovery, by ensuring that at all times a person is available who—
  - (a) has suitable equipment; and
  - (b) has the relevant knowledge, has received relevant training, or is under appropriate supervision.
- (5) A person who fails to comply with subclause (1) or (2) commits an offence and is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

...

The United Kingdom also requires that '[a]n anaesthetic must be administered' when dehorning cattle<sup>39</sup> or goats<sup>40</sup> of any age.

As these international examples show, it is reasonable to mandate in legislation the use of pain relief and anaesthetic on farmed animals forced to undergo mutilating procedures purely for the benefit of humans. If NSW does not introduce similar legislative requirements for pain relief for the procedures listed in par. 24(1)(a), it cannot claim to be a leader in farmed animal welfare.

**Recommendation:**

That the Bill be passed in its entirety.

We thank the Committee for taking our submission into consideration.

Tara Ward  
Executive Director / Solicitor (Volunteer)  
Animal Defenders Office

3 August 2020

---

<sup>39</sup> *The Mutilations (Permitted Procedures) (England) Regulations 2007*, Sch. 2, item 6.

<sup>40</sup> *Ibid*, Sch. 6, item 4.