

**Submission  
No 88**

## **INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES**

**Organisation:** World Animal Protection Australia

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**WORLD ANIMAL PROTECTION AUSTRALIA**

**SUBMISSION to**

**THE STANDING COMMITTEE ON STATE DEVELOPMENT**

**INQUIRY INTO ANIMAL WELFARE IN NEW SOUTH WALES**

**February 2022**

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## Submission on NSW draft Animal Welfare Bill 2022

World Animal Protection welcomes the invitation to provide input on the NSW Government's draft Animal Welfare Bill 2022. This Bill provides improvements to the current legislative approach that we welcome. These improvements include the listing of minimum care requirements, which we note now includes a requirement to allow animals the opportunity to express natural behaviours. This is a welcome inclusion that better reflects the importance of providing positive experiences, rather than simply seeking to avoid 'cruelty.' We also welcome the expanded definition of 'animal' which now includes cephalopods, and decapod crustaceans. While this Bill does provide improvements on the current legislative approach in the *Prevention of Cruelty to Animals Act (POCTAA)*, we do have some recommendations on how the proposed bill could be improved.

### 1. Recognising Animal Sentience and Defining Animal Welfare

A major deficiency in the current Bill is that it does not include a clear recognition of animal sentience. We would recommend including the recognition of animal sentience, and the inherent value of animals, as one of the key objects of the Act in section 3. We would note that other Australian and International jurisdictions have now moved to include animal sentience within similar legislation. The ACT included recognition of animal sentience in 2019, and Victoria is reviewing recommendations to include similar provisions in their animal welfare legislation.<sup>1</sup> Similarly, New Zealand and countries across the European Union (EU) have formally recognised animal sentience in their legislation.<sup>2</sup>

Formally recognising animal sentience under the objects of the proposed legislation would not only bring NSW in line with best practice in other jurisdictions, but it would also help further our reputation as a high welfare market. Currently, Australia ranks quite poorly for animal welfare under World Animal Protection's Animal Protection Index, receiving a 'D' ranking following the last

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<sup>1</sup> *Animal Welfare Act 1992 (ACT)*, s.4A; Engage Victoria, *Summary of Proposals A New Animal Welfare Act for Victoria* (Directions Paper, October 2020) 2.

<sup>2</sup> *Animal Welfare (Sentience) Bill (UK)*, s 2; *Animal Welfare Amendment Act (No 2) 2015 (NZ)*, s 4.



assessment in 2020.<sup>3</sup> The API outlines the legislative approach in NSW and other states, whereby sentience is not clearly recognised as one key contributor to the low ranking.<sup>4</sup>

Failure to improve our reputation on animal welfare could also have negative implications for trade. Key trading partners including the EU and the United Kingdom (UK) have raised concerns about lower animal welfare standards in Australia.<sup>5</sup> The free-trade agreement between the UK and Australia now includes a dedicated chapter on animal welfare that recognises animal sentience.<sup>6</sup> Similar agreements are currently being negotiated with trading partners including the EU. Both these trading partners prioritise animal welfare and recognise animal sentience, and it is important that NSW as a significant primary producer upholds those standards within its legislation. One way of clearly signalling the importance of animal welfare to trading partners would be to include the explicit recognition of animal sentience in the objects of this proposed Bill.

In addition to including the recognition of animal sentience in the objects of the act, we would also encourage the Government to include a clear meaning of animal welfare under section 7. While the dictionary in schedule 3 provides a definition of an animal cruelty offence and an animal welfare offence, neither of these clearly defines what welfare entails. Evidence has shown that livestock industries generally adopt an instrumental view of animal welfare emphasising “basic health and functioning” as the only measure, as this aligns with productivity goals, and commonly claim that productivity is an indicator of good animal welfare. In contrast, the public is more concerned with the naturalness of an animal’s production environment and how the animal actually feels (its affective states).<sup>7</sup>

A definition of animal welfare should be provided that includes reference to the Five Domains – outlining positive states for animals, ensuring they experience a ‘good life’, not simply the avoidance

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<sup>3</sup> World Animal Protection, ‘Animal Protection Index: Australia’ (website, 2020) <https://api.worldanimalprotection.org/country/australia>

<sup>4</sup> Ibid.

<sup>5</sup> See, eg, Jess Davis, ‘British, Australian food standards differences causing angst in free trade deal’ (*ABC Online*, 11 June 2021) <https://www.abc.net.au/news/2021-06-11/british-australian-food-standard-differences-causing-angst/100205024>

<sup>6</sup> *Australia-United Kingdom Free-Trade Agreement*, signed 17 December 2021 (not yet in force), art 25.1.

<sup>7</sup> Jennifer Ford, *Advance Australian Animal Welfare* (World Animal Protection Report, 29 February 2016) 17.



of cruelty. This definition should be consistent with the definition of animal welfare provided by the World Organisation for Animal Health (OIE). We recommend the following be inserted:

Animal welfare means ‘the physical and mental state of an animal in relation to the conditions in which it lives and dies.’ The guiding principles for animal welfare include the ‘Five Domains’ for the conditions of animals under human control. Namely,

1. Nutrition
2. Environment
3. Health
4. Behaviour
5. Mental State

Including this definition, and a clear reference to the Five Domains would help to strengthen the guidance on what animal welfare entails and provide a foundation to inform the minimum care requirements articulated in section 13.

## **2. Independent Office of Animal Welfare and a Minister for Animal Welfare**

World Animal Protection supports the establishment of an Independent Office of Animal Welfare (IOAW) as a NSW statutory authority with responsibility for advising upon animal welfare and protection issues, and monitoring compliance with, and enforcement of, relevant legislation. The IOAW could be responsible for oversight of enforcement provisions in the Bill currently under review, as well as accompanying legislation regarding the exhibition of animals, and livestock panel oversight. Currently, the oversight of animal welfare sits primarily with the Department of Primary Industries (DPI). While we appreciate the expertise held by this department, there is an inherent conflict as the DPI also has primary responsibility for ensuring the agriculture industry remains profitable. Key animal welfare issues may conflict with the need to prioritise profitability – including, for example, issues around the use of fast-growing broiler breeds, or the high stocking densities permitted in intensive farms. Studies reviewed in the *Advance Australian Animal Welfare* report found that the current ‘regulatory framework produces structural incentives prioritising productivity goals over animal welfare’, and further, that ‘regulators identify more strongly with industry



stakeholders than with animal welfare stakeholders and taking a primarily instrumental view of animal welfare.<sup>8</sup>

Establishing an Independent Office of Animal Welfare would help to address some of these limitations within the existing regulatory framework. It would also strengthen the agriculture industry's social license within the community. The Future Eye report revealed general public support for an Independent Office of Animal Welfare, stating that, 'the current regulatory environment has the potential to provoke significant outrage in the general public if the federal government is found by the general public to be unable to regulate on farm welfare issues that are becoming increasingly present in the national discourse.'<sup>9</sup> The report proceeded to outline that public outrage at failure to adequately regulate the industry could lead to distrust of both the Government and the agriculture industry.

While these reports were looking at national frameworks, we believe there is still a critical role for NSW in helping to establish a clear standard for independent oversight of animal welfare. As a key primary producer, NSW should take the lead by demonstrating the potential improvements to animal welfare that can be had, by facilitating independent oversight through an IOAW. Finally, World Animal Protection recommends that Ministerial oversight of the IOAW should sit with a dedicated Animal Welfare Minister that is not also the Agriculture Minister. Again, this will remove any real or perceived conflicts between ensuring the welfare of animals and promoting the profitability and efficiency of the agriculture sector.

### **3. Compliance with Standards**

In relation to section 20, World Animal Protection would like to see greater clarity around how standards are to be adopted, and how they will relate to the minimum care requirements outlined in the draft Bill. Despite the central role played by the standards in achieving the proposed legislative objects, the Bill is silent on the process and criteria for the making and adoption of such standards. Section 21 of the Bill simply states that the regulations may apply, adopt or incorporate a standard as in force at a stated time or from time to time. This allows for the making and adoption of any

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<sup>8</sup> Ibid 16.

<sup>9</sup> Future Eye, *Australia's Shifting Mindset on Farm Animal Welfare* (Report 2018) 15.



animal welfare standard no matter how deficient or contrary to the objects of the legislation it may be.

Modern animal welfare law establishes decision making criteria for the adoption of industry standards to ensure consistency and accountability in the process of development. On this point, we refer to Part 5 and s.183A of the *New Zealand Animal Welfare Act 1999* which set out in detail the process for how Codes of Welfare and Regulations are to be made under the Act. Part 5 outlines the involvement of the National Animal Welfare Advisory Committee in the preparation of Codes, public notification and consultation requirements, and factors that must be considered including the consistency with the purpose of the Act, public and stakeholder submissions, relevant scientific knowledge, and available technology. Proposed Codes are also required to be tabled in the House of Representatives. Section 183A states that regulations cannot prescribe standards that do not fully meet the duty of care obligations set out in the Act. Exceptions may be granted to avoid negative impacts on industry but only for a period of 10 years before the regulations must be brought into line with the Act's duties and obligations.

Such provisions ensure the process for making Codes and Regulations, under which the welfare of millions of animals will be determined, is consistent and accountable, and this ultimately leads to a more robust and coherent legislative framework. The Bill should establish similar decision-making criteria to ensure that NSW animal welfare standards are developed in an equally consistent and accountable manner. Furthermore, we would encourage the department to include in the Bill a clear timeline for when standards need to be adopted within NSW.

#### **4. Prohibited and Restricted Procedures**

World Animal Protection recommends expanding the list of prohibited and restricted procedures. While we note that currently the restricted/prohibited procedures are partially covered under section 20 on compliance with standards, if the above recommendation is adopted, whereby standards would need to align with this Act, these recommendations would help further the protection of animal welfare.



First, under the list of prohibited procedures, we recommend including a prohibition on mulesing. Mulesing is a procedure that causes significant pain and distress to lambs. A scientific study reported in 2011, found that “[the] surgical mulesing procedure results in a sustained behavioural and physiological response in lambs, including a reduction in maintenance behaviours and an increase in plasma cortisol concentrations.”<sup>10</sup> Although previous research had demonstrated the short-term pain and distress experienced by lambs during the mulesing procedure, this research team documented both short-term and longer-term impacts. In the short-term, they found that lambs who had been subject to mulesing were slower to begin feeding when given food, compared to lambs in the control group who had not experienced the procedure.<sup>11</sup> Overall, they spent less time eating and less time lying down – the lambs who had received the procedure stood for extended periods with their heads down.<sup>12</sup> The altered behavioural state of the lambs was taken as an indication of pain, in line with previous animal behavioural studies. These behavioural shifts were also observed over the next 2-15 days following the procedure.<sup>13</sup> Scientists also recorded higher cortisol levels in lambs that had been mulesed in the first 7 days after the procedure.<sup>14</sup> This is another indicator of stress and lower welfare.

Although the alternatives available may be more labour intensive, World Animal Protection would still encourage the department to ban the procedure. Lambs are sentient animals that are capable of feeling pain and fear. They deserve to be treated in a way that recognises their sentience and ensures the highest possible welfare outcomes. Furthermore, we are aware that the Australian Sheep Industry had undertaken to phase out mulesing in 2010.<sup>15</sup> It’s clear that the industry recognised at the time that the practice was not in keeping with societal expectations or with the current science around animal welfare. It’s disappointing that a complete phase out has not been achieved in the last decade and we would therefore urge the department to include a prohibition in

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<sup>10</sup> L.E. Edwards et al, ‘Acute effects of mulesing and alternative procedures to mulesing on lamb behaviour’, *Applied Animal Behaviour Science* 133 (2011) 169, 170.

<sup>11</sup> *Ibid* 172.

<sup>12</sup> *Ibid*.

<sup>13</sup> P.H. Hemsworth et al, ‘Effects of mulesing and alternative procedures to mulesing on the behaviour and physiology of lambs’, *Applied Animal Behaviour Science* 117 (2008) 20, 23.

<sup>14</sup> *Ibid* 24.

<sup>15</sup> Joanne Sneddon and Bernard Rollin, ‘Mulesing and animal ethics’, *Journal of Agriculture & Environmental Ethics* 23 (2010) 371, 372.





this Bill and bring our animal protection legislation more in line with both the science and with public sentiment.

World Animal Protection also recommends prohibiting a range of procedures including ear-tagging, branding, teeth and tail cutting. Farm animals like pigs are sentient creatures and the performance of these procedures, even with pain relief, causes significant pain and distress to the animals. Research performed by World Animal Protection found that the classes of drugs available for use after these procedures may not always be available to those who need them and further, that they “are not always effective, especially for moderate to severe pain caused by castration.”<sup>16</sup> The report went on to conclude that “avoiding painful procedures is clearly preferable. There is no convincing evidence that pain can be reduced to an acceptable level on a commercial scale with the drugs available for food producing animals worldwide. Providing only post-procedural pain relief contravenes scientific advice on pain management.”<sup>17</sup>

Furthermore, piglets and other farm animals are also given high doses of antibiotics during painful procedures and weaning to pre-empt infection or disease.<sup>18</sup> Simply administering pain relief during these procedures would not address the reliance on antibiotic use to prevent infections arising from the procedures. A 2019 World Animal Protection report found “Routine and continuous use of drugs in farmed animals poses potential risks for animals, people, and the environment. Many of the bacteria commonly carried by animals can also cause disease in people. When regularly exposed to low doses of antibiotics, the bacteria that survive are better able to reproduce and spread<sup>19</sup>: In September 2016, the United Nations (UN) General Assembly formally recognized the inappropriate use of antimicrobials in animals as a leading cause of rising antimicrobial resistance (AMR). The performance of routine and unnecessary procedures including teeth and tail cutting and ear notching lead to the administration of more antibiotics in farmed animals. This can be avoided by taking steps now to completely phase out the use of these procedures.

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<sup>16</sup> World Animal Protection, *Sharing Success: The global business case for higher welfare for pigs raised for meat* (2019) page 7.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, 4.

<sup>19</sup> World Animal Protection, *US Pork and the Superbug Crisis: How Higher welfare farming is better for pigs and people* (2019), page 3.



In addition to the scientific evidence supporting a phase out to the use of painful procedures, consumer polling also reveals that consumers are overwhelmingly opposed to the use of painful procedures on farm animals. World Animal Protection commissioned global research, with more than 9,000 people in 11 countries and five continents between October 2017 and March 2018. The aim was to better understand people's pork consumption habits, their understanding of the conditions in which pigs are raised, and their attitudes to pigs and their welfare. Key results include the following:

- More than two thirds in each market surveyed: Australia, Brazil, Canada, Chile, China, Denmark, New Zealand, Thailand, UK, and US said they found imagery of intensive pig farming 'upsetting, wrong or shocking'.
- In some markets, up to 86% of people were worried about antibiotics in pork production.
- More than 60% in each market said they would 'probably' or 'definitely' not buy pork from a supermarket that sourced from where piglets experience teeth grinding, cutting or tail docking and castrations, sometimes without pain relief'.
- 80% to 93% of people surveyed in each market believe 'it is important that pigs are reared with higher welfare standards.'

Australia is falling behind other comparable countries when it comes to farm animal welfare. Looking to the EU as an example, they have introduced laws that go beyond simply requiring anaesthetic; their legislation has now prohibited the routine use of these painful procedures.<sup>20</sup> A European study that was conducted before they prohibited the routine use of these procedures concluded that piglets that had not had their teeth clipped and tails docked showed less pain related behaviour than those who had the procedures.<sup>21</sup> Furthermore, the piglets who were not subject to the procedures had a lower mortality rate.<sup>22</sup> Therefore, we encourage the Department to look to the legislative examples offered by the EU to see how Australia could eventually phase out the use of these procedures. In the interim, they should be placed on the restricted list in Schedule 1, with a

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<sup>20</sup> RSPCA, 'What are the Animal Welfare Issues with Piglet Husbandry Procedures?', RSPCA Knowledgebase (July 2020), <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-piglet-husbandry-procedures/>

<sup>21</sup> Beirendonck et al, 'Improving survival, growth rate and animal welfare in piglets by avoiding teeth shortening and tail docking?', *Journal of Veterinary Behaviour: Clinical Applications and Research* 7 (2012) 88, 93.

<sup>22</sup> Ibid.



requirement that pain relief be administered and that the procedure only be performed by a veterinarian.

## **5. Exemptions**

We are concerned that the current exemptions to the Bill, under sections 119, 120 and 121 are too broad and may undermine the overall effectiveness of this legislation in achieving its objects. In particular, we would like to see the exemption for prescribed animal husbandry procedures reviewed and limited, in line with our recommendations in the above section of our submission. We are not supportive of the exemption for the aquaculture industry. The last decade has seen a significant expansion in the aquaculture industry, particularly in Tasmania. This has included well documented cases of mass fish die-offs and other animal welfare concerns.<sup>23</sup> The Government should prioritise the adoption of appropriate standards and guidelines for the industry as a matter of urgency and should ensure that those standards are in line with the provisions in this Bill.

## **6. Sentencing and Court Procedures**

We support the proposal for harsher sentences for animal cruelty and animal welfare offences, however, we reiterate earlier suggestions regarding the inclusion of a recognition of animal sentience, and a clear definition of what a positive welfare state involves for animals. This will help ensure courts have adequate guidance when determining the severity of an offence.

Furthermore, we would encourage the department to look into creating a specialised court or having dedicated magistrates/justices be appointed with an understanding of animal welfare requirements. This is a specialised area and often punishments may not adequately reflect the severity of the offence due to a lack of understanding from the decision maker. We would support a model similar to what has been applied in the Land and Environment court. Similarly, open standing should be available in matters pertaining to animal cruelty and neglect. This would help ensure greater enforcement of animal welfare standards across the state.

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<sup>23</sup> See, eg, Siobhan Galea, 'Macquarie Harbour salmon: 1.35 million fish deaths prompt call to 'empty' waterway of farms' (*ABC Online*, 29 May 2018) < <https://www.abc.net.au/news/2018-05-29/salmon-deaths-in-macquarie-harbour-top-one-million-epa-says/9810720>>



### Conclusion

We again thank Department for the opportunity to provide input on these issues. We are available to provide further information and to answer any questions as required.

Yours sincerely,

Ben Pearson  
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World Animal Protection Australia