#FairGoForAnimals

Building a fairer Australia for animals

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The Australian Alliance for Animals is a national charity leading a strategic alliance of Australia's key animal protection organisations with a combined supporter base of over 2 million people. The Alliance works to secure systemic reform of Australia's animal welfare policy and governance frameworks to create a fairer system for all animals.

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In the spirit of reconciliation, we acknowledge the Traditional Custodians of country throughout Australia and their enduring connections to land, sea and community. We pay respect to their Elders past and present.

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#FairGoForAnimals

The #FairGoForAnimals campaign proposes a framework for building a more balanced and independent animal welfare governance structure in Australia by advocating for the systemic reforms outlined in this report.

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Overview

Animals are an intrinsic part of Australian society. From our iconic wildlife to our cherished pets, and the many millions of animals farmed for food and fibre, animals play an integral role in many facets of our lives.

Australians have created a society based on egalitarian principles that embrace the concept of a 'fair go' for all, and many Australians extend this principle to our treatment of animals.

Research shows that Australians overwhelmingly oppose animal cruelty, acknowledge that animals are sentient, and support strong standards of animal welfare.[1] A 'fair go for animals' means treating them in a way that respects their sentience and protects their welfare.

> **A fair go for animals means treating them in a way that respects their sentience and protects their welfare.**

Yet Australia's animal welfare laws, standards, and regulatory systems fall short of this basic ideal. Legislative recognition of animal sentience is largely non-existent[2], painful practices are still permitted despite the existence of more humane alternatives, and enforcement responsibilities are relegated to charities with limited government support. Governments view animal welfare as a lower priority issue and, due to a lack of national leadership, legal protections for animals are inconsistent across the country.

But this can change. Australia has the potential to create a promising new era for animal welfare. With a recent change of federal government and animal welfare legislative reviews progressing across the country, for the first time in a decade Australia has a real opportunity to achieve much-needed reform for animals.

This report explains the issues facing Australia's broken animal welfare policy system, and outlines a framework for creating a more balanced, independent governance structure which better represents the interests of animals and the millions of Australians who care about their welfare.


Australia has the potential to create a promising new era for animal welfare.

The problem

Australia's animal welfare governance system is structurally flawed due to its failure to ensure adequate independence in government decision-making. At the heart of the regulatory problem is a fundamental conflict of interest between supporting animal use industries and promoting animal welfare. Responsibility for safeguarding and monitoring animal welfare is delegated to ministers for agriculture and agriculture departments, who are primarily responsible for promoting commercial industries that rely on animals for their profitability.

By combining responsibilities for animal welfare with agriculture, the design of the animal welfare governance system predisposes policy processes to regulatory capture. Regulatory capture occurs when regulators act in the interests of the very business or industry they are charged with regulating, in a way that is inconsistent with the public interest the regulation is designed to serve.[3] When delegated to departments with competing responsibilities, animal welfare becomes a secondary priority. Decision-makers and regulators can be resistant to pursuing higher standards of welfare due to potential conflict with industry productivity and profitability goals.

> **At the heart of the regulatory problem is a fundamental conflict of interest between supporting animal use industries and promoting animal welfare.**

This structural problem is the root cause of a range of associated deficiencies in regulatory processes and outcomes. Australia's current approach to developing national animal welfare standards lacks consistent principle and legislative accountability, resulting in standards that fail to reflect contemporary scientific knowledge and community expectations and contradict the basic minimum standards of care outlined under state and territory animal welfare legislation (Animal Welfare Acts).

A lack of national leadership, funding and resourcing also leads to inconsistent and fragmented implementation of the standards at the state and territory level. This in turn creates negative impacts on business and industry including increased compliance costs, unfair competition between jurisdictions, lower investment certainty, and reduced market access.

These deficiencies are also damaging to Australia's international reputation. Australia received a low 'D' grade on World Animal Protection's international Animal Protection Index.[4] Many factors contributed to this poor rating, but chief amongst them was that Australia's animal welfare system lacks national leadership and our standards fail to reflect best available science and community expectations about animal welfare.

> **Australia's animal welfare standards fail to reflect best available science and community expectations about how animals deserve to be treated.**

Image: Jo-Anne McArthur / We Animals Media

The solution

This report outlines our proposed solutions to this complex regulatory problem. The system needs to be redesigned with greater independence built into the framework to improve its integrity and ensure the public's interest in animal welfare is properly reflected in resulting policy and standards. This can be achieved through a combination of governance and institutional reforms at both state and national levels to elevate the importance of animal welfare within government, promote national leadership and coordination, and ensure greater consistency within Australia's animal welfare legislative framework.

Ministerial recognition of animal welfare

As a starting point, animal welfare should be recognised in ministerial portfolios separate from agriculture portfolios at both the state/territory and federal levels.

Creating independent ministerial portfolios for animal welfare would elevate the importance of animal welfare within government, reduce problematic conflicts of interest, and ensure that animals and the millions of Australians who care about them, receive the dedicated focus and attention they deserve. Rather than competing with agriculture, animal welfare should be appropriately recognised as a discrete area of governance with its own law and policy agenda.

National animal welfare commission

In addition to re-allocating ministerial responsibility, it is critical that responsibility for developing national animal welfare policy and standards be transferred from agriculture departments to an independent statutory agency in the form of a national Animal Welfare Commission.

This important reform was first recommended by the Australian Productivity Commission in its 2016 report on the regulation of Australian agriculture.[5] There are several examples of federal bodies that develop national policy and standards in areas that are regulated by the states and territories, including Food Standards Australia and New Zealand, the National Transport Commission, the Australian Commission on Safety and Quality

in Health Care, and Safe Work Australia. A properly constituted national Animal Welfare Commission with relevant expertise and sufficient resourcing could become a centre of excellence in animal welfare policymaking, providing much needed national direction and renewed impetus for animal welfare standards development in Australia.

State animal welfare authorities

While a national Animal Welfare Commission would ideally coordinate the jurisdictions in the development of national standards, due to constitutional arrangements, the states and territories would remain responsible for the implementation and enforcement of the standards and the administration of Animal Welfare Acts. This role should be carried out by independent statutory Animal Welfare Authorities established under those state and territory Acts.

Appropriately resourced Animal Welfare Authorities would have many benefits, including focusing enforcement efforts and capabilities, increasing the level of sophistication and specialisation in regulatory services, and reducing actual and perceived conflicts of interest. Creating independent Animal Welfare Authorities would create a more robust and independent animal welfare regulatory framework, improve community confidence, and deliver better animal welfare outcomes.

Guiding principles and sentience recognition

To improve consistency and accountability, state and territory Animal Welfare Acts should include a set of guiding decision-making principles that apply across government to any regulatory or policy decisions that impact animal welfare. To further guide the application and interpretation of the Animal Welfare Acts, the purposes of the legislation should explicitly recognise the sentience of animals and their intrinsic value.

As both a foundational purpose and guiding principle, recognising animal sentience is the first step towards creating a more principled, consistent, and coherent legislative framework. Additionally, it would position Australia well for meeting future community and trade expectations, given the move towards animal sentience recognition in other countries across the world.

> **Recognising animal sentience is the first step towards creating a more principled, consistent, and coherent legislative framework.**

Fair and accountable standards development

The current process for developing and adopting national standards for animal welfare in Australia is ad hoc, not fit for purpose, dominated by industry interests, and lacks legislative accountability. A new process that includes independent governance by a national Animal Welfare Commission, balanced and inclusive stakeholder representation, independent scientific literature review, and meaningful public consultation should be formally agreed by all jurisdictions. State and territory animal welfare laws should provide legislative support for these elements by establishing criteria for the making and adoption of the standards. The combined effect of these reforms would greatly improve consistency and accountability in the process of standards development and lead to more robust and genuinely science-based standards.

Adequate animal welfare funding and resources

The current level of funding allocated to animal welfare services across Australia does not reflect the level of public interest and concern for animal welfare and preventing animal cruelty. Limited funding has led to major delays in the review and implementation of national standards and reliance on charitable organisations to provide most of the resourcing for the enforcement of animal welfare laws. Governments must budget to invest considerably more resources in animal welfare services to meet the needs and expectations of both the community and Australia's trading partners in the coming decade and beyond.

A path forward

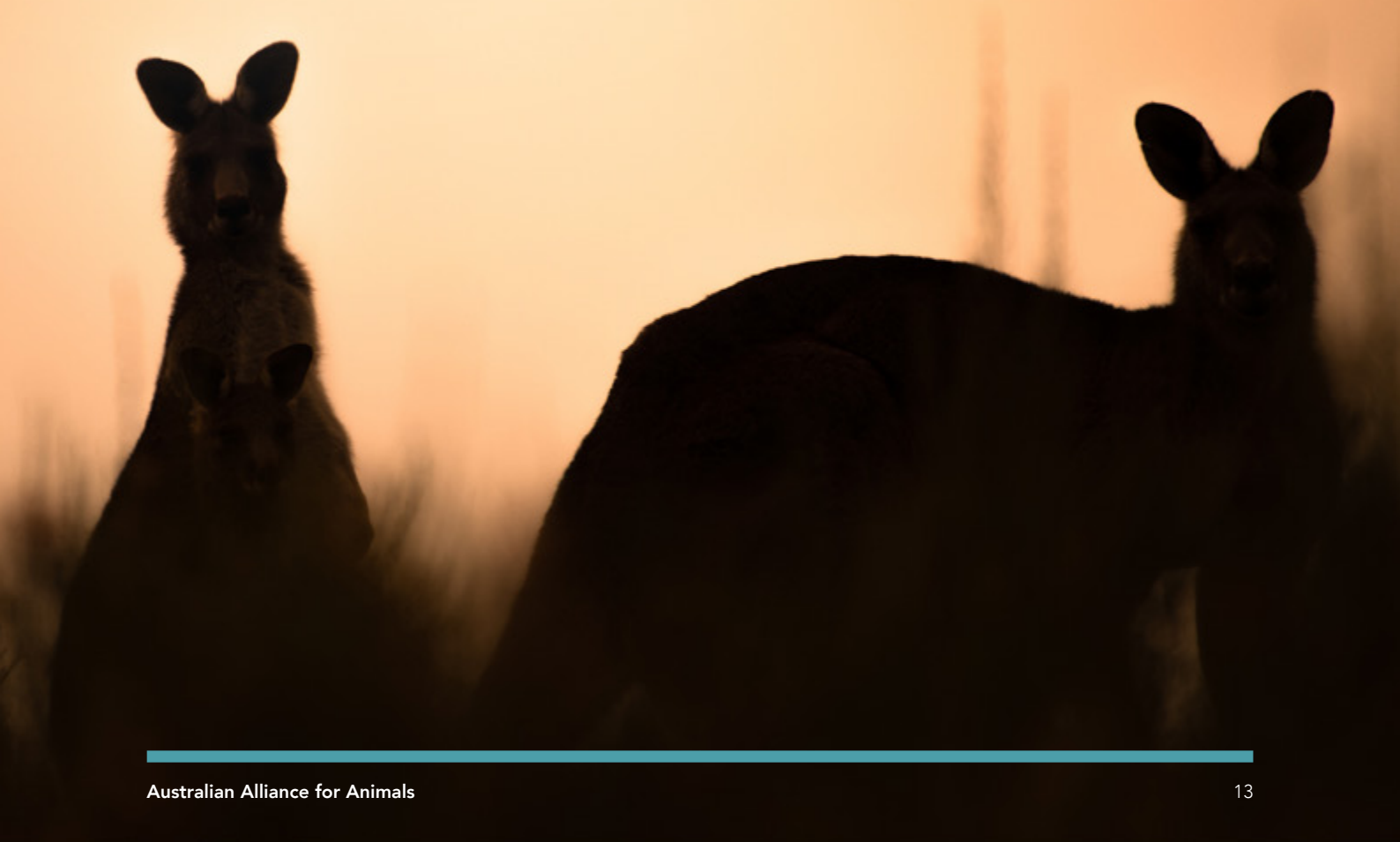
Australians support high standards of animal welfare and want to see animals given a fair go. Reform is desperately needed to ensure this public concern is reflected in our nation's law, policy and practice.

> **Australians support high standards of animal welfare and want to see animals given a fair go.**

This report provides a framework for achieving that end. Creating a more balanced and independent governance structure, improving the integrity and accountability of decision-making, and increasing funding and resourcing for vital animal welfare services will ensure that animal welfare laws and policies better reflect the interests of animals and the expectations of the community.

The Australian Alliance for Animals is dedicated to creating systemic change for animals and working with the community to achieve the reforms outlined in this report. We welcome you to join us.

Together, we can build a fairer Australia for animals.
www.fairgoforanimals.org.au



Recommendations

Recommendation 1

Recognise animal welfare in the title of a ministerial portfolio separate to the agriculture portfolio at both the Australian Government and state/territory government levels.

Recommendation 2

Establish a national Animal Welfare Commission as a statutory body with sufficient funding and resourcing to undertake the following functions:

- Facilitating national cooperation and agreement between state and territory jurisdictions and stakeholders on key animal welfare issues
- Coordinating the development and implementation of a national animal welfare strategy in conjunction with states and territory governments and stakeholders
- Managing and supporting the process for developing national animal welfare standards
- Promoting national consistency in legislation and standards
- Monitoring and publicly reporting on the implementation of national strategy and standards
- Providing advice to governments on animal welfare issues of national significance
- Commissioning research and publishing reports on animal welfare issues and guidance on animal welfare policymaking.

Recommendation 3

Establish independent statutory Animal Welfare Authorities under animal welfare legislation at the state and territory level with sufficient funding and resourcing to administer the legislation, including the following functions:

- Overseeing the appointment and training of inspectors
- Supporting the functions of state Animal Welfare Advisory Committees
- Administering licensing regimes for animal establishments
- Administering compliance monitoring programs for animal industries
- Determining animal forfeiture applications
- Approving official forms for use under the legislation
- Recognising interstate prohibition and other court orders
- Publicly reporting on compliance and enforcement activities.

Recommendation 4

Establish the following decision-making principles under state and territory Animal Welfare Acts that apply to decisions made under those Acts and to any decision of a minister, department or authority that impacts animal welfare:

Recommendation 4 (continued)

- The minimum standard of care requirements outlined in the Act should be met for all animals in the care or control of people
- Harm, pain or distress for animals should be avoided
- Where scientific evidence demonstrates that a practice causes adverse welfare outcomes it should be prevented or phased out
- Failing to meet the minimum standards of care or causing harm, pain or distress to animals should only be permitted in exceptional and temporary circumstances where:
  - there are no other alternative means of achieving the intended outcome in a way that meets the minimum standards of care or avoids the harm, pain or distress
  - all reasonable steps have been taken to reduce the harm, pain or distress as much as possible (for example, through the use of appropriate pain relief), and
  - the harm, pain or distress is proportionate to the outcome sought to be achieved having regard to the sentience of animals and the purposes of the Act.

Recommendation 5

Establish a power for the Minister responsible for animal welfare to compel other ministers, departments, and authorities to apply the decision-making principles.

Recommendation 6

Recognise the sentience of animals and their intrinsic value in the objects provisions of state and territory animal welfare legislation.

Recommendation 7

Establish a formalised national standard-setting framework that includes the following key elements:

- Independent governance and management
- Balanced and inclusive stakeholder representation
- Independent scientific literature review
- Meaningful public engagement and consultation
- Published reasons for decisions.

Recommendation 8

Introduce requirements for the making and adoption of animal welfare standards and guidelines under state and territory animal welfare legislation, requiring them to be:

- Based on good practice, contemporary scientific knowledge and technology, community expectations, and advice from the Animal Welfare Advisory Committee
- Not inconsistent with the objects, principles and duties of the legislation, and
- Reviewed within 10 years to ensure they continue to comply with these requirements.

Part A:

Why we need change

Australia's animal welfare governance system is structurally flawed. At the heart of the regulatory problem is a fundamental conflict of interest between supporting animal use industries and promoting animal welfare. This structural problem has led to the creation of animal welfare standards which fail to reflect contemporary scientific knowledge and community expectations and contradict the basic standards of care outlined under animal welfare legislation.

Image: Jo-Anne McArthur / We Animals Media

1 The problem is structural

Animals are used by humans for many different purposes, including recreation, work, companionship, science and farming. Due to the inherent vulnerability of animals and the inability to represent their own interests, using animals for instrumental purposes often leads to serious negative impacts on their welfare.

Whether it be whipping horses to make them run faster, testing the toxicity of cleaning products on mice, or breeding exaggerated bodily features into dogs for aesthetic preferences, animal welfare is often compromised for human benefit and convenience. Understanding the nature of this tension is critical for designing appropriate governance and regulatory systems that ensure animal welfare is given due regard and not routinely overridden by human interest.

Animal welfare is often compromised for human benefit and convenience.

The tension is especially prevalent in the context of commercial farming, where animals are produced at scale under competitive market conditions which place continuous pressure on farm businesses to reduce costs. While animal welfare and farm productivity may be mutually compatible on basic measures of welfare, such as the provision of sufficient food and water or protection from predation, there are many instances where increases in productivity are made at the expense of animal welfare.

Examples of practices intended to improve productivity which have been shown to have negative impacts on animal welfare include:

- Increasing stocking densities in intensive livestock operations
- Manipulating lighting levels in indoor poultry sheds to reduce activity
- Barren housing systems that severely restrict movement, social interactions, or opportunities for animals to express important behaviours
- Genetically selective breeding for fast growth rates
- Subjecting animals to painful husbandry procedures without providing pain relief.

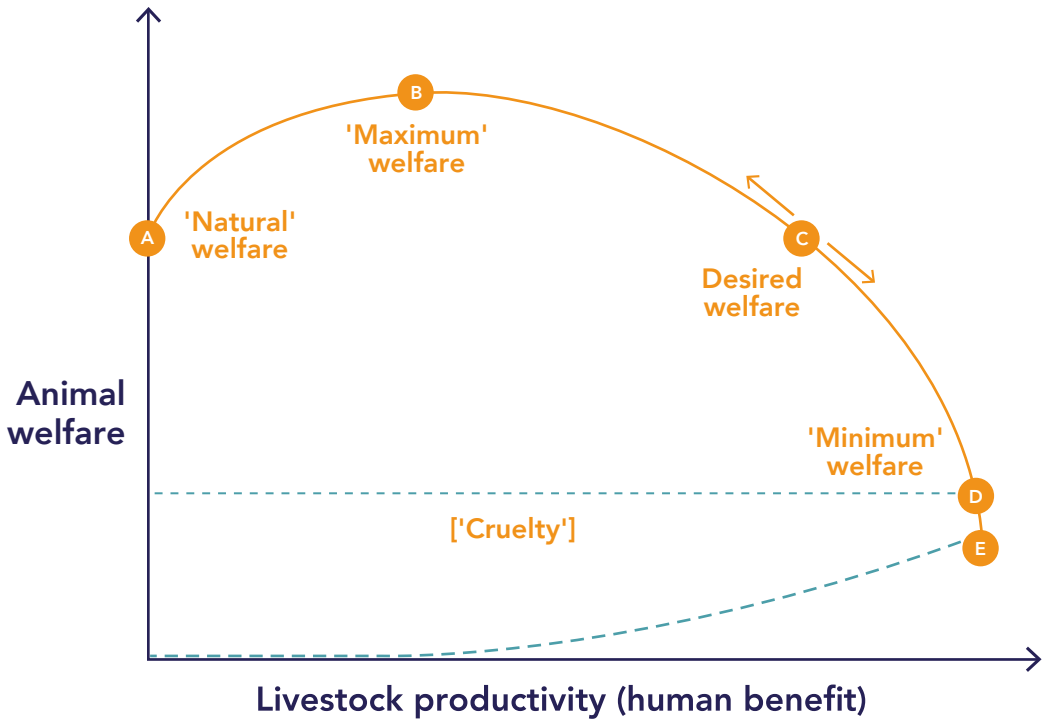
In some cases, these welfare compromises lead to increased rates of mortality. However, even increased mortality can be economically efficient where animal loss is offset by overall gains in the productivity of the enterprise as a whole.

The generalised nature of the relationship between animal welfare and productivity is depicted in Graph 1 below.[6]

While there is often a mutually beneficial relationship between welfare and productivity at lower levels of output (points A to B), as the size, efficiency, and intensity of production systems increase, welfare begins to decline (from points B through to E).

This decline occurs because the costs associated with improving animal welfare, which go beyond those related to productivity gains, are generally not factored into the price of the end animal product, leaving producers with little economic incentive to maximise welfare. As a result, animal suffering associated with commercial farming is effectively externalised from the market.

GRAPH 1: RELATIONSHIP BETWEEN LIVESTOCK PRODUCTIVITY AND ANIMAL WELFARE



Source: This graph is an edited version of the graph featured in the Productivity Commission's Regulation of Australian Agriculture Inquiry Report – originally adapted from John McInerney. See endnote 6.

Image: Lissy Jayne / HIDDEN / We Animals Media

As agricultural economist Professor John McInerney explains:

> ***Since animal welfare is in the nature of a nonmarket good ('externality') it carries no evident price and so farmers inevitably focus on the animals' productivity, which does provide commercial reward. Economic optimising theory demonstrates that market signals will tend to cause welfare standards to fall below the socially desirable norm.***[7]

The existence of this fundamental conflict was also noted by the Australian Productivity Commission in its 2016 report on the regulation of Australian agriculture, where it noted that "animal welfare and production and profitability do not always go hand-in-hand."[8]

Acknowledging the practical and scientific reality of such conflicts is critical to ensuring governance models for animal welfare are appropriately designed to facilitate independent oversight in the public interest and not simply the facilitation of commercial interests.

1.1 Captured by design

The design of government departments and agencies, particularly where they are tasked with pursuing conflicting objectives, can influence their predisposition to a process known as 'regulatory capture'.[9] Regulatory capture occurs when an institution acts in the interests of the very business or industry it is charged with regulating in a way that is inconsistent with the public interest the regulation is designed to serve.[10] There are numerous factors that may cause a regulator to deviate from serving the public interest, most of which relate to the nature of the relationship between the regulator and the regulated industry.

In the animal welfare policy context, the key mechanisms of regulatory capture relate to the design of the relevant institutions (primarily agriculture departments) and their organisational culture.

1.2 Competing regulatory responsibilities

In Australia, responsibility for animal welfare policy and regulation is delegated primarily to departments and ministries for agriculture and primary industries, as shown in Table 1.

Agriculture departments are ultimately industry promoting agencies, charged with enabling and providing services to agriculture and livestock industries. Their primary performance measures reflect this focus by concentrating on increases in productivity and the gross value of primary production. Analysis of the strategic plans and annual reports of the departments reveals that while six of nine jurisdictions mention animal welfare, only one jurisdiction includes a performance measure relating to animal welfare.[11]

TABLE 1: ANIMAL WELFARE POLICY AND REGULATORY RESPONSIBILITY IN AUSTRALIA

Jurisdiction	Legislation	Responsible Minister	Department
ACT	Animal Welfare Act 1992	City Services	Transport Canberra and City Services
AUSTRALIA	Export Control (Animals) Rules 2021	Agriculture, Fisheries and Forestry	Department of Agriculture, Fisheries and Forestry
NSW	Prevention of Cruelty to Animals Act 1979	Agriculture	Department of Primary Industries
NT	Animal Protection Act 2018	Agribusiness and Aquaculture	Department of Industry, Tourism and Trade
QLD	Animal Care and Protection Act 2001	Agricultural Industry Development and Fisheries	Department of Agriculture, Fisheries and Forestry
SA	Animal Welfare Act 1985	Climate, Environment and Water	Department of Environment and Water
TAS	Animal Welfare Act 1993	Primary Industries and Water	Department of Natural Resources and Environment
VIC	Prevention of Cruelty to Animals Act 1986 Livestock Management Act 2010	Agriculture	Agriculture Victoria
WA	Animal Welfare Act 2002	Agriculture and Food	Department of Primary Industries and Regional Development

The practice of delegating animal welfare responsibilities to institutions with a primary focus on promoting agricultural productivity predisposes the policy framework to regulatory capture. While there is a legitimate role for government in promoting the productivity of industry, problems can arise when industry-promoting departments are delegated with animal welfare responsibilities that conflict with this agenda.

As the Australian Productivity Commission noted in the context of animal welfare regulation:

> ***Representing the interests of the industry that a government department is tasked with addressing is not of itself a concern, it is consistent with its objective. However, issues can arise when that department is also responsible for implementing a regulation that has broader community interests that may conflict with those of the industry.***[12]

This risk was also identified by the Organisation for Economic Co-operation and Development (OECD), which has recommended against delegating conflicting responsibilities to regulators:

> ***Where a regulator has a range of functions, it is important that these are complementary and not potentially in conflict. This means that the performance of one function should not limit, or appear to compromise, the regulator's ability to fulfil its other functions (including its core regulatory function). The assignment to a regulator of both industry development and regulatory functions, such as protecting health or the environment, can reduce the regulator's effectiveness in one or both functions and can also fail to engender public confidence. Such conflicting functions can impair a regulator's clear role and they do not contribute to effective performance. For these reasons, this combination should be avoided.***[13]

When departments responsible for managing policy on animal welfare standards are also responsible for meeting key performance indicators (KPIs) aimed at increasing the productivity and gross value of animal use industries, they are faced with conflicting priorities.

While it is not uncommon for government departments to balance competing interests and responsibilities, issues arise when there is significant disparity in the priority placed on each competing responsibility, making it difficult, if not impossible, to arrive at a reasonable balance.

As public sector governance expert Professor Eric Biber notes, government agencies systematically underperform on secondary goals that conflict with the achievement of their primary goals.[14] In particular, agencies tend to pursue short-term economic goals that are easy to measure at the expense of more elusive social goals in the public interest.[15]

Growth in the productivity and gross value of livestock industries can be readily quantified and measured, whereas improvements in animal welfare outcomes and community confidence are not as easy to quantify. For this reason, it is unsurprising that agriculture departments maintain such a strong focus on promoting industry growth and productivity, while KPIs for improving animal welfare

outcomes largely fail to feature in their strategic planning and annual reporting documents.

As noted by the Productivity Commission:

> *"Animal welfare is likely to be of secondary importance when the primary objective of the agency responsible for livestock welfare is to promote a productive and profitable agricultural sector."*[16]

1.3 Misaligned regulatory culture

The tendency of agriculture departments to prioritise industry productivity goals over animal welfare is also compounded by the strong affiliation and close connections key personnel have with livestock industries via their facilitation and extension roles.

Empirical research has demonstrated that department of agriculture policy and regulatory personnel identify more strongly with agriculture industry stakeholders than with animal welfare stakeholders in terms of their worldviews, norms and expectations around animal welfare standards within livestock industries.[17] While strong ties and identification with livestock industries may help to facilitate their industry promotion role, these factors can distort their approach to animal welfare policy and regulatory responsibilities.

This was demonstrated in the independent review of the federal Department of Agriculture's capability and culture in regulating the live animal export trade by Phillip Moss AM in 2018 (the Moss Review). The Moss Review noted the following:

> *The department's focus on trade facilitation means that it is balancing competing factors in its role as the regulator of live animal exports. Some stakeholders and department staff members told the review that the department's trade facilitation and regulatory functions are contradictory. The focus on trade facilitation and industry deregulation appears to have had a negative impact on the department's culture as a regulator.*[18]

Moss went on to find that this cultural problem led to negative animal welfare outcomes:

> *Under this regulatory framework, the department as the regulator has failed to prevent continuing animal welfare incidents. This failure has been the result of various factors and competing priorities outlined in this report. Correspondingly, parts of the live animal export industry have failed to adhere to the existing standards and give priority to animal welfare.*[19]

The problems identified by the Moss Review reflect features of 'cultural capture', a process where "those in charge of the relevant state entity internalise, as if by osmosis, the objectives, interests and perception of reality of the vested interest they are meant to regulate".[20] Factors that induce the capture of cultural norms include common backgrounds and experience between industry representatives and regulators, and an industry with a social purpose with which the regulators identify.[21]

This can create difficulties in the policy formulation process because "when people

identify with groups or adopt ideas…it is considerably harder for those people to identify the sources of their choices," and they are not open to "rational argument about the public interest"[22]. Alternative viewpoints can become difficult for the regulator to conceptualise,[23] and a form of unconscious bias towards the interests and demands of the regulated industry may emerge.

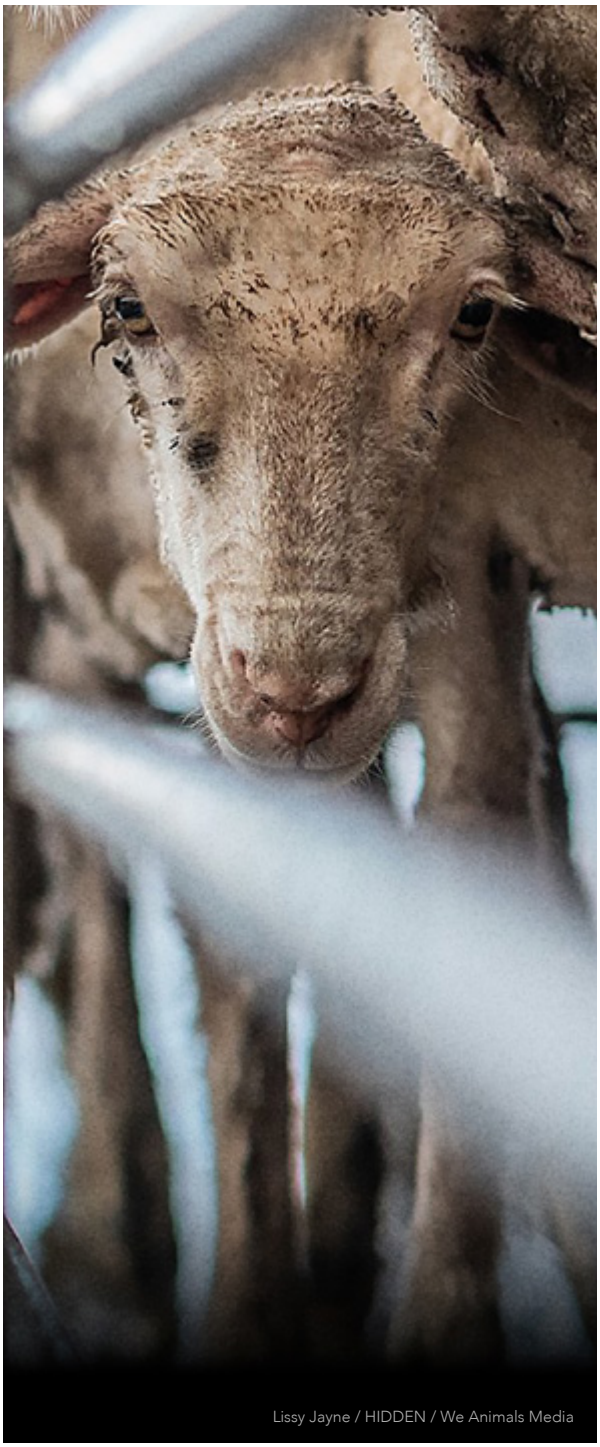
As Professor Barry Mitnick explains:

> ***'Capture' is said to occur if…quite independently of the formal or conscious desires of either the regulators or the regulated parties the basic structure of the reward system leads neither venal nor incompetent regulators inevitably to a community of interests with the regulated party.***[24]

As agriculture departments are more readily rewarded for delivering on measurable economic goals that align with the interests of the agriculture industry, they will often adopt the industry's norms and perspectives, and subsequently underperform on secondary responsibilities, including animal welfare, that conflict with those goals.

Such competitive tensions are also experienced by ministers for agriculture who are often the final decision makers on contested animal welfare policy issues. In fact, agriculture ministers have an even greater incentive to prioritise industry productivity goals as this is often used as the measure of their performance by influential agriculture lobby groups and linked to their ongoing electoral support.

All of these factors demonstrate that current governance and regulatory settings for animal welfare in Australia ensure that the economic interests of livestock industries are protected and dominate the setting and implementation of animal welfare policy and standards.



Lissy Jayne / HIDDEN / We Animals Media

CASE STUDY

NSW DPI and the national poultry standards

In 2015, the NSW Department of Primary Industries (DPI) embarked on the process of leading the development of the national Australian Animal Welfare Standards and Guidelines for Poultry (Standards). The Standards were to cover all of Australia's major poultry industries, including chickens raised for meat, egg-laying hens, ducks, geese, turkeys and others, encompassing over 700 million animals per year. They were also significant because they were due to determine the future use of controversial battery cages for egg laying hens. The NSW government had a strong interest in the Standards as the state was home to the largest proportion of the nation's poultry industries, including the greatest share of battery cage egg production.

At the first meeting of the Stakeholder Advisory Group (SAG), animal welfare representatives were informed by the meeting's independent chairperson that battery cages were "off the table for discussion"[25]. Instead, the chair advised that a decision about the use of battery cages would be referred to state and territory government officials (primarily representatives of agriculture departments) and ultimately decided by agriculture ministers.

Animal welfare stakeholders were extremely concerned by this development and by the lack of science underpinning the draft Standards. They requested that battery cages be included within the scope of the SAG deliberations and that an independent scientific literature review be conducted. The request was declined.

Throughout the process, animal welfare stakeholders, such as RSPCA Australia, felt the development process was being "stage-managed" to get the Standards through "as quickly as possible with as little change as possible."[26]

Documents later released under Freedom of Information laws revealed

that NSW DPI officials had set up a separate group with executives of poultry industries to effectively manage the process behind the scenes.[27] This group discussed how the official SAG meetings would run, "what will be accepted/not accepted" and the "rules of engagement".[28] The group was also given the opportunity to meet with the SAG's proposed independent chair prior to his appointment and to review early drafts of the Standards in the absence of other stakeholders.[29]

The documents further revealed that a DPI official removed basic principles of poultry welfare from initial drafts of the Standards, which would have required birds to have "sufficient space to stand, lie and stretch their limbs and perform normal patterns of behaviour", on the basis that hens "can't do this in battery cages".[30]

The documents also included an official complaint letter from three leading poultry scientists alleging that their research had been distorted to provide support for the continued use of battery cages.[31] The scientists noted that the 'support papers' produced by the writing group were "selective, and thus unbalanced, outdated on some points, and at times incorrectly referenced".[32] They concluded that the papers were "misleading" and did not "objectively reflect the scientific literature and state of scientific knowledge."[33] Despite this, NSW DPI continued to refuse requests from animal welfare stakeholders to conduct an independent scientific literature review.

When these events were later revealed on the ABC's 7.30 program it led one prominent governance expert to conclude that "it looks from all appearances as an act of systemic corruption which we thought we had banished in Australia."[34]

While claims of corruption may be debateable, it is clear from the course of events described above that the DPI was acting in the interests of the cage egg production industry in seeking to protect the continued use of battery cages. In light of the overwhelming public response to the consultation process calling for an end to battery cages (over 167,000 submissions[35]), this position was clearly inconsistent with the public's interest in improving animal welfare standards.

The experience with the Standards development process can be explained as a form of regulatory capture, caused not by individual officials acting inappropriately, but by the structure of a system which delegates animal welfare policy responsibilities to departments with fundamentally conflicting objectives. As Professor Mitnick explains, capture can occur when "the basic structure of the reward system leads neither venal nor incompetent regulators inevitably to a community of interests with the regulated party."[36]

2 The processes are flawed

For over a decade, progress has stagnated on animal welfare reform in Australia. We are now one of the worst performing developed nations on the global Animal Protection Index,[37] the only index of its kind, which many NGOs, multi-national food companies, institutional investors, and government advisors draw on for guidance on a nation's animal welfare record. This is in large part due to a lack of national animal welfare leadership and funding. The systems we use to create laws and policies concerning animal welfare in Australia are broken, and government processes are failing to keep up to date with both community expectations and contemporary animal welfare science. As a result, we have been unable to achieve a raft of crucial reforms with real potential to meaningfully improve the lives of animals.

2.1 Legislative inconsistencies

Australian animal welfare law currently lacks consistent principle. Policy and administrative decisions made under the legislation and the processes for developing and adopting national Animal Welfare Standards and Guidelines (standards) are not guided by a nationally agreed process or a defined set of overarching decision-making principles. This creates uncertainty among stakeholders and leads to inconsistencies in the decisions made and standards prescribed under the legislation.

The current approach to developing national standards is usually determined by the state or territory that volunteers to manage the process, which is often the jurisdiction with the largest portion of the relevant industry that will be impacted by the proposed standards. This increases the potential for the standard setting process to be conflicted. As state and territory animal welfare laws contain no requirements regarding the outcomes the process must meet, the resulting standards can vary widely in terms of the level of care and protection afforded to animals in different contexts of use.

Image: Jo-Anne McArthur / Animal Liberation Victoria / We Animals Media

This is a significant problem because the standards are an integral part of the animal welfare legislative framework, governing the welfare of hundreds of millions of animals in Australia – far more than the number of animals that benefit from the general duty of care provisions outlined under the principal Animal Welfare Acts.

The standards often prescribe practices that are inconsistent with the duties of care outlined in the Animal Welfare Acts. This necessitates the use of wide-ranging defences and exemptions for actions undertaken in accordance with the relevant standards or model codes.[38] Without such exemptions, many of the practices outlined in the standards and codes could potentially be found to breach the duties and cruelty offences contained in the Animal Welfare Acts.

> **The standards often prescribe practices that are inconsistent with the duties of care outlined in the Animal Welfare Acts.**

For example, the practice of confining female pigs to stalls which prevent them from turning around or expressing natural behaviours would likely constitute a breach of the duty contained in most Animal Welfare Acts requiring owners to provide appropriate living conditions and opportunities for their animals to exercise or express normal behaviours. However, because the use of such stalls is prescribed in the national Code of Practice for the Welfare of Pigs it is exempted from the application of this duty.[39]

The operation of the standards and codes of practice effectively creates a two-tiered animal welfare system in which animals kept for companionship are afforded the full suite of protections outlined under animal welfare legislation, while those kept for commercial purposes are denied the same standards of care, despite their equal sentience and similar biological and behavioural needs.

These intra-legislative inconsistencies are then further accentuated by interstate inconsistencies due to the fragmented approach states and territories take to the implementation of the standards. As shown in Table 2, progress for the review and implementation of the national standards has been extremely slow to date and the legal status of the standards, in terms of whether they are adopted as mandatory standards or voluntary guidelines, varies from state to state.

Image: Jo-Anne McArthur / We Animals Media

For example, national standards for sheep and cattle were endorsed by ministers in 2016 following a four-year development process. Over six years later, less than half of Australian jurisdictions have implemented them into state law. Of those that have, two have adopted the standards as mandatory regulations (South Australia and Queensland) while the other two (New South Wales and the Northern Territory) have adopted them as non-enforceable guidelines.

TABLE 2: PROGRESS FOR DEVELOPMENT AND IMPLEMENTATION OF NATIONAL STANDARDS

Animal Welfare Standard	Review commenced	Endorsed by Ministers	Implemented in state law	Mandatory?	
				Yes	No
Land Transport	2007	2008	SA, 2012; NSW, 2013; NT, 2013; Tas, 2013; Vic, 2013; Qld, 2014; ACT, 2018; WA, 2020	SA NSW Tas Vic Qld ACT WA	NT
Horses	2009				
Sheep	2012	2016	SA, 2017; NSW, 2017; Qld, 2021	SA Qld	NSW
Cattle	2012	2016	SA, 2017; NSW, 2017; Qld, 2021; NT, 2022	SA Qld	NSW NT
Saleyards	2013	2018	WA, 2020; Qld, 2021; NT, 2022	WA Qld	NT
Exhibited Animals	2014	2019			
Poultry	2015				
Slaughter	2016				
Pigs	2017				

2.2 Ignoring animal welfare science

Science plays a very prominent role in underpinning many decisions on animal use and the conditions under which animals are kept, yet our regulatory systems are failing to keep up with contemporary scientific knowledge in animal welfare. A long list of outdated practices causing animal pain and suffering have been allowed to continue due to the codification of poor animal welfare standards and inadequate consideration of animal welfare science.

Most codes and standards include an introductory statement that they are 'based on current scientific knowledge', implying there is a mechanism for reviewing the contemporary scientific literature in their development. In many other countries and sectors, a literature review of this kind is regarded as an essential step in ensuring that standards consider scientific knowledge.

> **A long list of outdated practices causing animal pain and suffering have been allowed to continue due to the codification of poor animal welfare standards and inadequate consideration of animal welfare science.**

However, under the current ad hoc approach to developing national animal welfare standards in Australia, commissioning a scientific literature review is optional and there is no established process for incorporating the review findings in the drafting of standards.

Scientific literature reviews are dependent on the allocation of specific funding, with their scope and terms of reference set by funding agencies, which typically consist of the relevant industry research and development corporations (RDCs), including Meat and Livestock Australia, LiveCorp, Australian Egg Corporation, Australian Pork Limited, Dairy Australia, the Australian Meat Processors Corporation, and Australian Wool Innovation.

In contrast, in the European Union (EU) the European Food Safety Authority (EFSA) panel on Animal Health and Welfare has implemented clearly defined processes and methodologies for developing independent scientific opinions on farmed animal welfare,[40] backed up with defined policies on independence, and the selection, appointment and operations of the panel and its expert working groups.[41]

The level of integrity and quality control which underpins the EFSA assessments of animal welfare risk provide a robust foundation for ensuring science is reflected in subsequent EU legislation and strategy. In New Zealand, the National Animal Welfare Committee (NAWAC) is required under the Animal Welfare Act 1999 (NZ) to take into account scientific knowledge in the development of codes of welfare, and NAWAC has developed guidance on the consideration of science in setting standards.[42]

After examining Australia's national animal welfare standards development process, the Productivity Commission found that "there are large gaps in the scientific evidence base used to inform standards."[43] The Commission also raised concerns from stakeholders relating to the validity of scientific studies funded by industry and the biased selection of science presented during standard setting.

One example was the setting of a standard allowing bobby calves to be deprived of feed for up to 30 hours during transport to slaughter. This standard was based on research funded by the industry's RDC, Dairy Australia. The Productivity Commission highlighted independent research showing that the standard lacked scientific foundation.[44]

Independent expert scientific assessment of animal welfare is crucial for ensuring that the framework for measuring animal welfare reflects contemporary thinking. For many years, the Australian animal welfare science landscape has been dominated by industry-funded research which prioritises a narrow biological functioning approach, focusing on health and productivity.

> **Independent expert scientific assessment of animal welfare is crucial for ensuring that the framework for measuring animal welfare reflects contemporary thinking.**

The Australian Government allocates over $100 million a year in public funds to livestock industry RDCs, which is partly used to carry out such research. More recently, the Five Domains model of animal welfare, which allows for consideration of both physical and functional factors (nutrition, environment, health, behaviour) and an animal's overall mental state arising from these factors, has emerged as the preferred best practice framework for animal welfare assessment.[45] This model also allows for the inclusion of positive welfare and the evaluation of the impacts of human-animal interactions.[46]

2.3 Ignoring community expectations

As well as inadequately reflecting best-available animal welfare science, the current system fails to adequately consider and incorporate community expectations about how animals should be treated.

A 2018 report, commissioned by the Australian Government and prepared by the specialist consulting firm Futureye, explored the views of Australians on farmed animal welfare.[47] The report found that community expectations on farmed animal welfare are evolving, and there is a "high level of concern about the treatment of farm animals and current regulation".[48] It further found "high levels of agreement on rights and freedoms for animals, particularly relating to freedom from pain and cruelty":[49]

- 95% of Australians view farmed animal welfare to be a concern
- 92-95% (depending on the species) view farmed animals as sentient
- 91% want to see some reform to address their concerns.[50]

The report also noted that members of the public raised concerns over the perception of conflicting interests when "the same regulatory body responsible for the promotion for the agricultural industry was also responsible for ensuring animal welfare standards."[51]

More recent polling by Roy Morgan Research in March 2022[52] found similarly high levels of support for stronger animal welfare laws and for governments to do more to protect animal welfare:

- 98% of Australians consider animal welfare to be important
- 94% support laws that ensure animals are provided with a good quality of life
- 97% support laws that ensure animals are protected from cruel treatment
- 95% support animals being given pain relief for surgical procedures
- 80% support government doing more to protect animal welfare
- 74% support the creation of an independent body to oversee animal welfare
- 85% support animal welfare laws reflecting community expectations and best-available science.

Despite this clear public support for improved animal protection, it has proven very difficult to achieve even minor reforms to improve animal welfare standards.

Image: Jo-Anne McArthur / Animal Liberation NSW / We Animals Media

The Futureye report found there is a serious gap between societal expectations about how animals should be treated and what is permitted under Australian animal welfare regulations.[53] The Productivity Commission report identified an explanation for this gap, noting that:

> ***The current process for developing animal welfare standards "does not adequately value the benefits of animal welfare to the community. Progress has been very slow and the standard setting process does not adequately value the benefits of animal welfare to the community."***[54]

2.4 Lack of adequate funding

The strongest indicator of a government's priorities can be found in the allocation of funding and resourcing for programs and services falling under its responsibility. Animal-welfare related services attract less than one per cent of most department of agriculture funding arrangements.[55] In fact, these services are not even specifically identified in departmental operational expenditure records. In the rare instances where they are, it is in the context of other priority areas such as biosecurity, promoting industry sustainability, or facilitating market access. This stands in stark contrast with the level of government funding provided to livestock industry RDCs. Analysis of RDC financial reports reveals that in the 2021/22 Financial Year, the Australian Government allocated over $165 million to livestock industry research, development and extension services.

Animal-welfare related services attract less than one per cent of most department of agriculture funding arrangements.

In 2013, in a bid to reduce government expenditure, the Australian Government withdrew funding for the Australian Animal Welfare Strategy (AAWS) and its associated research projects, disbanded the Australian Animal Welfare Advisory Committee and Animal Sector Working Groups, and abolished the Animal Welfare Branch within the Department of Agriculture with its 23 staff relocated to alternative roles, mostly unrelated to animal welfare.[56] In the lead up to the 2022 Federal Election, the Australian Labor Party committed to re-establishing the AAWS with $5 million in funding over four years,[57] but no budget allocation has been made at the time of writing.

The limited funding allocated to animal welfare has also led governments to rely on livestock industry groups to fund the development of national standards. Sheep, cattle, and poultry industry bodies have contributed approximately one third of the funding required to produce standards for their respective sectors.[58] In turn, this gives industry bodies an additional layer of control and influence over the process.[59]

The limited funding and resources contributed by governments also results in significant delays to the development of standards, with the typical process taking between 5-10 years from drafting to implementation under state and territory law.

The low level of funding also applies to the enforcement of animal welfare law. Charitable organisations such as the state and territory RSPCAs actually provide greater levels of funding for enforcement services than state and territory governments, with a national inspectorate spend of $22.4 million, of which only $4.3 million, or 19%, comes from government sources.[60] No other area of law relies so heavily on charitable organisations raising funds from the public for its enforcement.

Governments must invest considerably more resources in animal welfare services to meet the needs and expectations of both the community and Australia's trading partners in the coming decade and beyond.

The provision of animal welfare policy and regulatory services should not be seen as a charitable endeavour. The current low levels of funding allocated to animal welfare services are not commensurate with the level of public interest and concern for animal welfare and preventing animal cruelty. Governments must invest considerably more resources in animal welfare services if they are to meet the needs and expectations of both the community and Australia's trading partners in the coming decade and beyond. As current base levels of funding are so low, even exponential increases in funding would still be a relatively small allocation in federal and state government budgetary terms.

3 The outcomes are damaging

The structural and procedural problems with the current system have resulted in Australian animal welfare standards falling well below the standards of many comparable countries.

3.1 Poor animal welfare standards

Under the law in Australia, animals can be routinely subjected to painful husbandry procedures without being given pain relief, including tail docking young piglets, castrating calves, mulesing sheep and dehorning cattle.

Housing systems which create extreme forms of confinement are also permitted, including battery cages for hens and sow stalls for pigs. These cramped and limiting cages and stalls prevent animals from moving freely and expressing their most fundamental and innate behaviours.

> **Australia's broken animal welfare system allows painful husbandry practices to be performed on animals without the use of any pain relief, including tail docking, castration, spaying, beak trimming, hot iron branding, de-horning, and mulesing.**

Although scientific evidence demonstrates that these practices cause pain, distress and suffering, and that more humane alternatives are available, they continue to be permitted by Australian animal welfare standards and codes. As noted above (see 2.1), Australian standards of animal welfare are in many cases so low they actually contradict the general duties of care prescribed under animal welfare legislation.

3.2 Impacts on business and industry

Poor animal welfare standards do not just impact animals but can have a very detrimental effect on animal-based businesses and the sustainability of entire industries due to a range of consequential social and economic factors. According to Futureye, a 'social licence' is the implicit acceptance of an industry, business, or service by the community – "to retain this acceptance requires ongoing alignment to society's values, paying attention to their concerns and resolving issues."[61] When the practices of an industry do not align with the community's values and expectations, the industry is exposed to social licence risk. Public exposure can lead to community


Image: Jo-Anne McArthur / We Animals Media

outrage, consumer boycotts, protest actions, litigation, and political and regulatory intervention. To prevent public exposure, agri-lobby groups have called for laws designed to impose severe restrictions and penalties on animal activists and to prohibit the publication of footage depicting animal mistreatment (often referred to as 'ag-gag laws'). However, research has demonstrated that such laws further accentuate social licence risks as they erode trust in the industries such laws are attempting to protect.[62]

When research data on community values and expectations around animal welfare are considered against current industry practices, it is clear that certain industries are heavily exposed. Sociological research indicates that values towards animals have been shifting gradually since the 1970s from an instrumental conception of animals to a post-material ethic of care and compassion.[63] These changing values are influencing expectations around the care and treatment of animals.

For instance, recent polling by Roy Morgan Research (see 2.3) found that 95% of Australians support animals being given pain relief for surgical procedures, and Futureye's research noted "high levels of agreement on rights and freedoms for animals, particularly relating to freedom from pain and cruelty."[64] Yet despite this, most invasive husbandry practices carried out on Australian farms occur without any form of pain relief.

Wastage, including the practice of killing male calves in the dairy industry and male chicks in the egg industry, is another area of high social licence risk. The greater the

divergence from community values, the greater the risk. Prominent examples of animal industries facing major social licence challenges in Australia include the live animal export trade and the horse and greyhound racing industries. Each of these industries have been the focus of major public exposés resulting in fierce public backlash and major regulatory reforms creating great disruption to the industries. In fact, the Albanese Labor Government has now committed to phasing out the live sheep export trade entirely.[65]

In addition to social licence risks, the fragmentation and inconsistency in national standards implementation (discussed in section 2 above) creates a range of additional difficulties for businesses operating across state borders. First, it increases compliance costs as the complexity involved with navigating differing state legislative requirements places a greater burden on businesses. Second, it impacts competition by creating an uneven playing field between businesses operating in different states. Third, it deters investment due to the uncertainty such inconsistencies create in the regulatory operating environment. And finally, it affects market access due to the increased difficulty in providing assurances to trading partners about the consistency of Australia's animal welfare laws and standards.

How do poor animal welfare standards impact business?

- Increased social licence risk
- Increased compliance costs
- Unfair competition
- Reduced investment certainty
- Reduced market access

3.3 Damage to Australia's international reputation

Australia's animal welfare governance system is rated a 'D' on the World Animal Protection Index.[66] As an advanced and economically prosperous nation with significant animal-based industries, this low ranking, relative to equivalent nations around the world, impacts upon Australia's international reputation.

The absence of national direction and priority, together with our comparatively low animal welfare standards, is also increasingly having negative consequences for trade and market access, with Australia's standards being heavily scrutinised during trade negotiations.[67] This is especially the case in markets sensitive to animal welfare, such as the European Union and the United Kingdom (UK) where their officials have insisted on including prominent animal welfare provisions in their respective free trade agreements with Australia to ensure a stronger focus and priority is given to lifting standards.[68]

Part B:

The reforms we need

As the previous discussion demonstrates, the current governance framework for animal welfare in Australia is structurally flawed. Greater independence must be built into the framework to improve its integrity and ensure the public's interest in animal welfare is properly reflected in resulting policy and standards. This can be achieved through a combination of governance and institutional reforms at both the state and national levels to elevate the importance of animal welfare within government, promote national leadership and coordination, and ensure greater consistency within Australia's animal welfare legislative framework.

4 Ministerial recognition

Creating independent ministerial portfolios for animal welfare would elevate the importance of animal welfare within government, reduce problematic conflicts of interest, and ensure that animals and the millions of Australians who care about them receive the dedicated focus and attention they deserve.

Ministers are often the highest level of executive decision making in government, providing the government's policy settings to departments falling under their portfolios. Decisions about ministerial portfolio responsibilities and arrangements provide an insight into the priorities of the government of the day. Responsibility for animal welfare is mostly delegated to ministers for agriculture, and there is currently no recognition of animal welfare within a ministerial or assistant ministerial title at either the state/territory or federal level.

Agriculture ministers exercise significant power over animal welfare law and policy across Australia. The national Agriculture Ministers' Meeting (AMM), comprised of state, territory and federal agriculture ministers, is the highest decision-making forum on animal welfare policy in the country. The AMM determines the agenda for national animal welfare standards development, and whether and how proposed standards are adopted into state law. Importantly, this includes deciding on whether standards are implemented as mandatory regulations or simply as voluntary guidelines.

At the state level, agriculture ministers are also afforded a range of special decision-making powers under state animal welfare legislation, including approving the appointment of inspectors, establishing licensing and industry compliance programs, authorising the commencement of prosecution proceedings, and approving the use of practices with high risk to animal welfare. Similarly, at the national level, the federal Minister for Agriculture, Fisheries and Forestry has a range of powers under the Export Control Act 2020 (Cth) including the ability to make regulations affecting the conditions under which animals are exported.

Assigning such crucial animal welfare responsibilities to ministers who are primarily responsible for supporting the growth and prosperity of agricultural industries is highly problematic. History demonstrates that animal welfare concerns are often overridden where improving animal welfare conflicts with the commercial interests of industry (see 1.1-1.3).

4.1 Structure and functions

Delegating animal welfare responsibilities to a separate ministerial portfolio and recognising animal welfare within the title of the portfolio, would help to ensure that animal welfare policy decision-making is prioritised and free from the conflicts of interest currently impeding progress. Rather than competing with agriculture, animal welfare should be appropriately recognised as a discrete area of governance with its own law and policy agenda. This would ensure that animals, and the millions of Australians who care about them, would receive the dedicated focus and attention they deserve.

Through maintaining sufficient independence from industries with a direct interest in animal production and use, ministers responsible for animal welfare would have greater capacity to appropriately weight the interests of animals in policymaking and develop more inclusive and robust processes.

Current administrative arrangements for animal welfare are a hangover from a past era where animal welfare was not viewed by government as a matter of significant public interest. Public sentiment has significantly changed since that time (see 2.3), and ministerial arrangements need to adapt to reflect contemporary community expectations about the importance of animal welfare in modern Australian society.

Rather than competing with agriculture, animal welfare should be appropriately recognised as a discrete area of governance with its own law and policy agenda.

As a secondary alternative to the creation of a fully separate ministerial portfolio, it would be possible to create an assistant animal welfare ministerial role. Due to the wide range of responsibilities falling under a minister's portfolio, assistant ministerial positions are often created to help prioritise and fulfil the minister's various duties. While delegating animal welfare responsibilities to an assistant ministerial position would be an improvement on the current lack of ministerial recognition, it would be vital for the role to maintain full independence from the agriculture portfolio. The experience from New Zealand is illustrative in this regard.

In 2017, New Zealand created an Associate Minister of Agriculture (Animal Welfare) under the Minister of Agriculture's portfolio.

Why we need independent ministerial recognition of animal welfare

- Drive a law and policy agenda dedicated to animal welfare
- Promote independence from animal use industries
- Ensure expertise in animal welfare decision-making
- Reflect community expectations about the importance of animal welfare

As the Associate Minister sits outside of Cabinet and is subordinate to the Minister of Agriculture, key policy decision-making power still rests with the Minister of Agriculture. Accordingly, in New Zealand, animal welfare continues to be subordinate to the promotion of animal agriculture industries, and many of the anticipated benefits of an independent animal welfare

minister have not been realised. Australia can learn from this example by ensuring that any revision to ministerial responsibility for animal welfare involves proper separation from the agriculture portfolio.

4.2 Benefits

Separate ministerial recognition for animal welfare would improve the governance of animal welfare policy by:

- Increasing independence in decision-making
- Improving role clarity for both agriculture and animal welfare ministers
- Enhancing the focus and priority given to animal welfare within government
- Increasing accountability for policy decisions and performance
- Improving communication and stakeholder relationships.

Animal welfare ministers in Europe

Various European jurisdictions have already moved responsibility for animal welfare away from agriculture ministers. Austria and Italy have both transferred animal welfare to their health ministries. In Belgium, ministers with animal welfare responsibility are not only separate from agriculture, but also have animal welfare within their ministerial titles. Significantly, European animal protection advocates have observed that separating animal welfare from agriculture portfolios has facilitated the adoption of more progressive legislation and policies.[69]

Recommendation 1

Recognise animal welfare in the title of a ministerial portfolio separate to the agriculture portfolio at both the Australian Government and state/territory government levels.

5 National Animal Welfare Commission

A national Animal Welfare Commission would provide much needed national direction and renewed impetus for animal welfare standards development in Australia.

Under Australian constitutional arrangements, animal welfare regulation is primarily the reserve of the states and territories. The federal government's jurisdiction is largely limited to matters relating to international trade, including live animal exports, standards in export abattoirs, international trade in wildlife, and the implementation of international obligations relating to animal welfare.

However, there are no constitutional barriers to the federal government playing a leadership role in bringing states and territories together with key stakeholders to formulate national strategy and develop national standards.

It is not unusual for federal government entities to undertake national leadership and standards development functions in areas that are regulated by the states and territories. There are several federal government agencies that perform such a role, including Food Standards Australia and New Zealand, the National Transport Commission, the Australian Commission on Safety and Quality in Health Care, and Safe Work Australia.

In the animal welfare policy and standards making context, a national Animal Welfare Commission would be the most effective vehicle for facilitating a similar form of national leadership. While proposals to establish an independent statutory body for animal welfare have been long-standing,[70] it was the Productivity Commission that first proposed the first fully developed model of an "Australian Commission for Animal Welfare" in its 2016 report on the regulation of Australian agriculture:

> ***To facilitate greater rigour in the process for developing national farm animal welfare standards, the Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, a stand-alone statutory organisation — the Australian Commission for Animal Welfare (ACAW) — should be established.***[71]

Under the Productivity Commission's model, implementation and enforcement of the standards would remain the responsibility of state and territory governments, but the national Animal Welfare Commission would monitor and report on progress and implementation to promote national consistency.

Productivity Commission recommendations

In 2016, the Productivity Commission produced a landmark report on the regulation of Australian agriculture.[72] Animal welfare regulation was a key feature of the report with the Commission identifying a range of deficiencies in the current regulatory framework, including a lack of independence and transparency in standard-setting and a failure to properly consider community expectations and scientific knowledge in developing policy.[73]

The Commission considered a range of options for addressing these issues and ultimately recommended the establishment of an Australian Commission for Animal Welfare with responsibility for developing national standards, monitoring and publicly reporting on implementation and enforcement by the states and territories, commissioning research, and educating the public about animal welfare issues.[74]

Support for the general idea of a national independent statutory agency overseeing animal welfare is widespread throughout the animal welfare community. A properly constituted commission with relevant expertise and sufficient resourcing could become a centre of excellence in animal welfare policymaking, providing much-needed national direction and renewed impetus for animal welfare standards development in Australia. A national Animal Welfare Commission would also be ideally placed to lead the development of a renewed Australian Animal Welfare Strategy in conjunction with state and territory jurisdictions and stakeholders.

A properly constituted commission with relevant expertise and sufficient resourcing could become a centre of excellence in animal welfare policymaking, providing much-needed national direction and renewed impetus for animal welfare standards development in Australia.

If established with appropriate statutory independence, a national Animal Welfare Commission would also overcome the inherent conflicts of interest at the heart of the current framework (see 1.1-1.3 above), thereby improving community confidence in the regulation of animal welfare.

5.1 Structure and functions

Structure

The structure of the national Animal Welfare Commission should include the following elements:

Established by legislation

- A national Animal Welfare Commission should be established by legislation setting out its objectives, roles, functions, powers and responsibilities.

Governed by skills-based commissioners

- The Commission should be governed by several skills-based commissioners with expertise in relevant disciplines including animal welfare science, law and regulation, economics and trade, ethics, and public policy.

Report to an Animal Welfare Minister

- The Commission should report to the minister responsible for animal welfare, separate to the agriculture portfolio (see section 4).

Protected from political interference

- The enabling legislation should also safeguard the Commission from political interference by protecting its independence. This could be achieved by setting clear boundaries within the legislation prohibiting the minister from directing the Commission in the performance of its duties under law.

Functions

The functions of the national Animal Welfare Commission should include:

Strategic leadership

- Facilitating national cooperation and agreement between state and territory jurisdictions and stakeholders on key animal welfare issues.
- Coordinating the development and implementation of a national animal welfare strategy in conjunction with state and territory governments and stakeholders.

Developing standards

- Managing and supporting the process for developing national animal welfare standards.
- Promoting national consistency in legislation and standards.

Monitoring and reporting

- Monitoring and publicly reporting on the implementation of the national strategy and standards.

Advice and guidance

- Providing advice to governments on animal welfare issues of national significance.
- Commissioning research and publishing reports on animal welfare issues and guidance on animal welfare policymaking.

As state and territory governments would maintain responsibility for the enforcement of national standards under this proposed model, it would be essential for the Commission's leadership to foster a common sense of purpose with jurisdictional representatives to ensure buy-in and nationally consistent implementation.

5.2 Funding allocation

In order to carry out the proposed functions in an effective manner, the national Animal Welfare Commission would require a workforce of around 40 personnel with an operating budget of approximately $15 million per year. Part of this funding could be sourced via reallocation of existing resources for related functions already undertaken or funded by the federal Department of Agriculture.

As the Productivity Commission has noted:

> ***The main costs with establishing an independent body are the administrative costs of operation. However, a well-designed independent body need not be more expensive than the current arrangements, and could deliver cost savings over time by providing greater clarity on farm animal welfare issues and by reducing the likelihood that regulations will be hastily implemented in response to intense public reaction to revelations of mistreatment.***[75]

In addition to this, the Commission should be tasked with renewing the Australian Animal Welfare Strategy, with a budget of approximately $2 million per year. As the Strategy is intended to be jointly owned by all Australian jurisdictions, funding could be shared on a pro rata basis between the Australian and state/territory governments.

5.3 Benefits

Establishing a national Animal Welfare Commission would have numerous benefits for improving animal welfare governance, including:[76]

- Greater independence in the standards development process, ensuring the process is robust and inclusive and that the standards provide a net benefit to the community.
- Greater national consistency in standards reducing complexity and compliance costs.
- Less concerns about potential conflicts of interest, particularly if the body was at arm's length from the Department of Agriculture.
- More independence in decision-making involving trade-offs between competing interests and objectives.
- Higher levels of confidence within the community and trading partners regarding Australia's animal welfare standards.

Image: Jo-Anne McArthur / We Animals Media

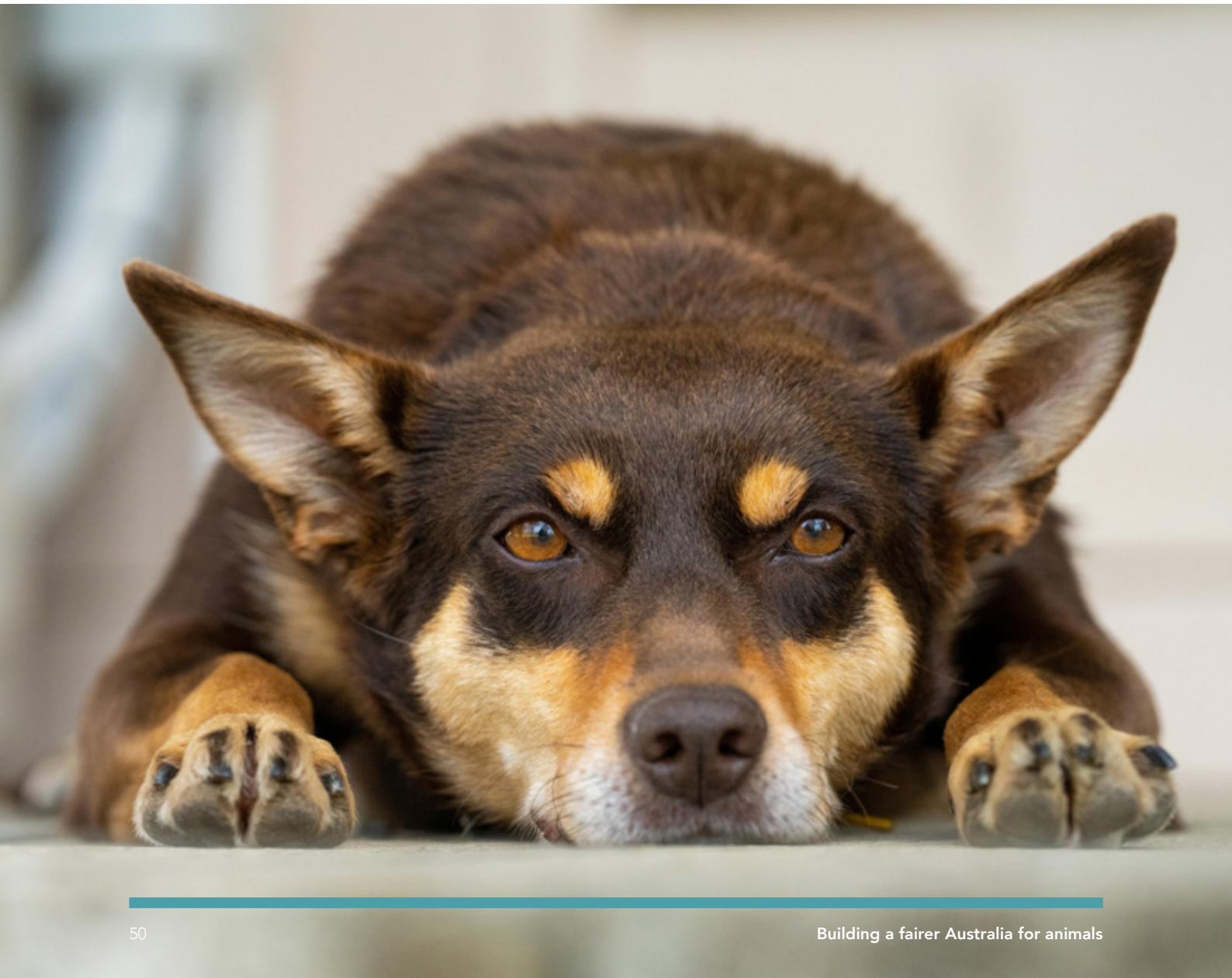
Recommendation 2

Establish a national Animal Welfare Commission as a statutory body with sufficient funding and resourcing to undertake the following functions:

- Facilitating national cooperation and agreement between state and territory jurisdictions and stakeholders on key animal welfare issues
- Coordinating the development and implementation of a national animal welfare strategy in conjunction with state and territory governments and stakeholders
- Managing and supporting the process for developing national animal welfare standards
- Promoting national consistency in legislation and standards
- Monitoring and publicly reporting on the implementation of national strategy and standards
- Providing advice to governments on animal welfare issues of national significance
- Commissioning research and publishing reports on animal welfare issues and guidance on animal welfare policymaking.

6 State Animal Welfare Authorities

Creating independent Animal Welfare Authorities would create a more robust and independent animal welfare regulatory framework, improve community confidence, and deliver better animal welfare outcomes.



While a national Animal Welfare Commission should coordinate the states and territories in the development of national standards, due to constitutional limitations the implementation and enforcement of such standards would remain the responsibility of state and territory governments.

Effective administrative and enforcement arrangements are critical components of modern animal welfare law. Animal welfare regulation is becoming more complex and specialised as demand from the community for greater assurances in all animal-based industries continues to grow. The community is increasingly expecting governments to provide more robust standards, stronger compliance monitoring and enforcement services, and greater transparency and public reporting. To meet these increasing demands and ensure effective regulation, state and territory governments need to invest greater resources in animal welfare enforcement and administrative functions.

TABLE 3: STATE/TERRITORY ANIMAL WELFARE LAW ENFORCEMENT BODIES

Jurisdiction	Legislation	Enforcement bodies
ACT	Animal Welfare Act 1992	Transport Canberra and City Services, Police, RSPCA
NSW	Prevention of Cruelty to Animals Act 1979	Police, RSPCA, Animal Welfare League
NT	Animal Welfare Act 2000	Department of Industry, Tourism and Trade, Police
QLD	Animal Care and Protection Act 2001	Department of Agriculture, Fisheries and Forestry, Police, RSPCA
SA	Animal Welfare Act 1985	Department of Environment and Water, Department of Primary Industries and Regions, Police, RSPCA
TAS	Animal Welfare Act 1993	Department of Natural Resources and Environment, Police, RSPCA
VIC	Prevention of Cruelty to Animals Act 1986 Livestock Management Act 2010	Agriculture Victoria, Police, RSPCA
WA	Animal Welfare Act 2002	Department of Primary Industries and Regional Development, Police, RSPCA

All jurisdictions have multiple entities that are responsible for enforcing animal welfare legislation (see Table 1). However, there is limited cross-agency coordination and intelligence sharing to ensure consistency in application.

These entities generally consist of the Police, the RSPCA, and state/territory agriculture departments. In most jurisdictions, agriculture departments have ultimate administrative responsibility for the legislation. Although they have strong technical capacity in livestock production, agriculture departments are not appropriate custodians for the enforcement and administration of state animal welfare law due to inherent conflicts between the protection of animal welfare and their broader goals of industry promotion (see 1.1-1.3).

To address this issue, state and territory governments should establish independent statutory authorities (Animal Welfare Authorities) to administer animal welfare laws within their jurisdictions.

> **Appropriately resourced Animal Welfare Authorities could focus enforcement efforts and capabilities, increase the level of sophistication and specialisation in regulatory services, improve cross-agency reporting and consistency, and reduce actual and perceived conflicts of interest.**

As a result, this could significantly improve public confidence and trust in the animal welfare regulatory framework.

OECD principles for regulatory governance

The Organisation for Economic Co-operation and Development (OECD) has outlined a number of factors for governments to consider in determining whether an "independent and structurally separate regulatory body" should be established:[77]

FACTORS TO CONSIDER IN CREATING AN INDEPENDENT AND STRUCTURALLY SEPARATE REGULATORY BODY

Factor	Description
Credible commitments over the long term	Establishing a more independent regulator can send an important message to regulated entities about the commitment of government to objective and transparent administration and enforcement of regulation.
Stability	Greater distance from political influences is more likely to result in consistent and predictable regulatory decision making.
Addressing potential conflicts of interest	Regulatory decisions that have significant flow-on impacts for government, e.g. on budgets or service delivery, or that must be seen to be applied impartially to both government and non-government entities may be better made by entities at arm's length from ministers and ministries.
Development of regulatory expertise	Where there is a need for specialist regulator expertise, which is best maintained in a specialist unit with quarantined resources.

Source: This table is an edited version of a table produced by the OECD, see endnote 77.

All of these factors are directly relevant to animal welfare regulation and weigh in favour of establishing independent Animal Welfare Authorities as statutory bodies separate to agriculture departments.

Statutory bodies are created by legislation setting out their structure, role, powers, and responsibilities. Establishing an entity by legislation (as opposed to simply creating a new branch or unit within a broader departmental bureaucracy) gives the entity greater independence and certainty in the performance of its functions.

The OECD explains that establishing independent regulatory bodies helps to improve integrity and trust in regulatory decisions:

> ***Establishing the regulator with a degree of independence (both from those it regulates and from government) can provide greater confidence and trust that regulatory decisions are made with integrity. A high level of integrity improves outcomes of the regulatory decisions.***[78]

The OECD principles have also been influential in guiding the Queensland Government's assessment of the benefits of setting up an independent Environmental Protection Agency (EPA), separate to the Department of Environment and Science.[79] A recently released Discussion Paper on the issue noted the following:

> ***A degree of structural separation can be beneficial as it provides protection from perceived or actual influence, and as a result, can promote a culture of independence and increased confidence for stakeholders and the broader community.***[80]

Acknowledging the need to increase community trust and confidence in the independence of environmental regulation led to the creation of EPAs in other states many years prior from the 1970s through to the 1990s. Today, all state and territory jurisdictions have an EPA, with the exception of Queensland.

The Discussion Paper also noted community survey results indicating that 78% of Queenslanders would have increased confidence that "industry would operate in an environmentally sustainable way" if an independent EPA was established.[81] Similar levels of public support for the creation of an "independent body to oversee animal welfare" have been documented in Australia (see 2.3).[82]

6.1 Structure and functions

To create the necessary level of separation between agriculture departments and state/territory Animal Welfare Authorities, they should be established under state and territory Animal Welfare Acts as independent statutory authorities. The enabling legislation should set out the objectives, roles, functions, powers and responsibilities of the Authorities. The Authorities should report to the minister responsible for animal welfare, separate to the agriculture portfolio, as per recommendation 1.

The enabling legislation should also safeguard the Authorities from political interference by protecting their independence.

This could be achieved by setting clear boundaries within the legislation, prohibiting responsible ministers from directing the Authorities in the performance of their duties under law.

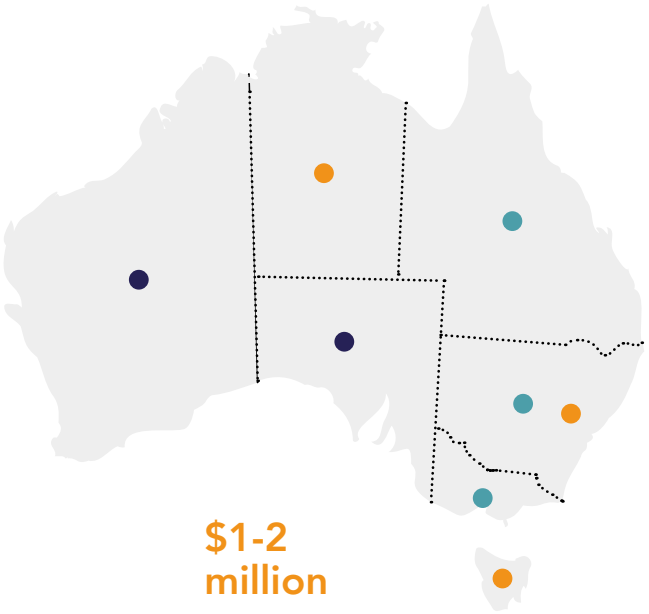
The functions of the Authorities should include:

- Overseeing the appointment and training of inspectors
- Supporting the functions of state Animal Welfare Advisory Committees
- Administering licensing regimes for animal establishments
- Administering compliance monitoring programs for animal industries
- Determining animal forfeiture applications
- Approving official forms for use under the legislation
- Recognising interstate prohibition and other court orders
- Publicly reporting on compliance and enforcement activities.

Under such an arrangement, state/territory agriculture departments would continue to play an important role in the provision of technical advice and assistance, industry extension services, and informing the development of policy. However, they would not be wholly responsible for the administration of the state's animal welfare laws and policy. Likewise, current enforcement entities such as the RSPCA would continue to provide enforcement services but instead of reporting to agriculture departments, they would report to state Animal Welfare Authorities.

6.2 Funding allocation

State/territory Animal Welfare Authorities would require sufficient funding and resourcing to deliver their intended services. The level of funding required would depend on the size of the jurisdiction and the resourcing provided by other agencies for inspection services. Approximate annual operating costs are provided below. Much of this funding could be sourced via reallocation of existing resources for equivalent regulatory services already carried out within agriculture departments.



$1-2 million
ACT, TAS, NT

$4-6 million
WA, SA

$12-15 million
NSW, VIC, QLD

6.3 Benefits

Establishing dedicated Animal Welfare Authorities would greatly improve the administration of animal welfare legislation by:

- Strengthening independence and integrity in regulatory decision-making
- Removing real and perceived conflicts of interest
- Increasing the level of dedicated focus and specialised technical capacity
- Better coordinating enforcement functions between agencies to improve consistency and efficiency
- Centralising enforcement data to improve reporting and information sharing
- Improving public confidence and trust in the regulation.

Ultimately, these benefits would lead to a more robust, independent animal welfare regulatory framework that would improve community confidence and deliver better animal welfare outcomes.

Recommendation 3

Establish independent statutory Animal Welfare Authorities under animal welfare legislation at the state and territory level with sufficient funding and resourcing to administer the legislation, including the following functions:

- Overseeing the appointment and training of inspectors
- Supporting the functions of state Animal Welfare Advisory Committees
- Administering licensing regimes for animal establishments
- Administering compliance monitoring programs for animal industries
- Determining animal forfeiture applications
- Approving official forms for use under the legislation
- Recognising interstate prohibition and other court orders
- Publicly reporting on compliance and enforcement activities.

Image: Jo-Anne McArthur / We Animals Media

7 Guiding principles and sentience recognition

Animal Welfare Acts across the country should include a set of guiding decision-making principles and explicitly recognise the sentience of animals and their intrinsic value.

7.1 Guiding principles

The dedicated focus and expertise of state/territory Animal Welfare Authorities would improve the consistency and robustness of decisions made under Animal Welfare Acts. However, to promote further consistency the Animal Welfare Acts should include a set of principles to guide the making of decisions under the legislation. This was recently proposed in the Victorian Government's New Animal Care and Protection Laws Plan (Victorian Plan).[83]

Decision-making principles should be drafted to ensure greater scrutiny is placed on decisions that impact animal welfare, fail to meet the duties of care outlined in the legislation, or cause harm, pain or distress to animals.

A proposed set of guiding principles to compel decision-makers to consider potential negative impacts on animals and how they can be avoided are provided below.

Proposed guiding principles for inclusion in Animal Welfare Acts

- The minimum standard of care requirements outlined in the Act should be met for all animals in the care or control of people.
- Harm, pain or distress for animals should be avoided.
- Where scientific evidence demonstrates that a practice causes adverse welfare outcomes it should be prevented or phased out.
- Failing to meet the minimum standards of care or causing harm, pain or distress to animals should only be permitted in exceptional and temporary circumstances where:
  - there is no other alternative means of achieving the intended outcome in a way that meets the minimum standards of care or avoids the harm, pain or distress
  - all reasonable steps have been taken to reduce the harm, pain or distress as much as possible (for example, through the use of appropriate pain relief), and
  - the harm, pain or distress is proportionate to the outcome sought to be achieved having regard to the sentience of animals and the purposes of the Act.[84]

As recommended under the Victorian Plan, principles such as these should apply, not only to decisions made under animal welfare laws, but to all decisions of government that may impact upon animal welfare. The legislation should also empower the minister responsible for animal welfare to compel other ministers, departments, and authorities to apply the principles. This would ensure a whole-of-government approach to considering and mitigating impacts on animal welfare.

7.2 Sentience recognition

To further guide the application and interpretation of the legislation, the purposes of the Acts should explicitly recognise the sentience of animals and their intrinsic value. Increasingly, countries around the world are acknowledging the importance of recognising the sentience of animals under animal welfare legislation.[85] At its core, the concept of sentience simply refers to the capacity to feel, including the ability to experience both pleasure and pain. It is well established that a vast range of animals meet the scientific criteria to be classed as sentient, yet in almost all Australian jurisdictions the sentience of animals has not been explicitly recognised under animal welfare legislation.

> **It is well established that a vast range of animals meet the scientific criteria to be classed as sentient, yet in almost all Australian jurisdictions the sentience of animals has not been explicitly recognised under animal welfare legislation.**

Across Australia, most state and territory Animal Welfare Acts include clauses which outline the legislation's key objectives. Although these objects clauses differ according to jurisdiction, they generally specify that the purpose of the legislation is to prevent cruelty to animals, provide community education, and promote animal welfare. However, most fail to properly outline precisely why protecting the welfare of animals is so important.

Modern societies have enacted animal welfare laws to cover a defined range of animal species because these animals are sentient. Australian animal welfare legislation should expressly acknowledge this foundational legislative purpose through the legal recognition of animal sentience.

This could be achieved through a simple addition to the objects provisions of the legislation in the following form:

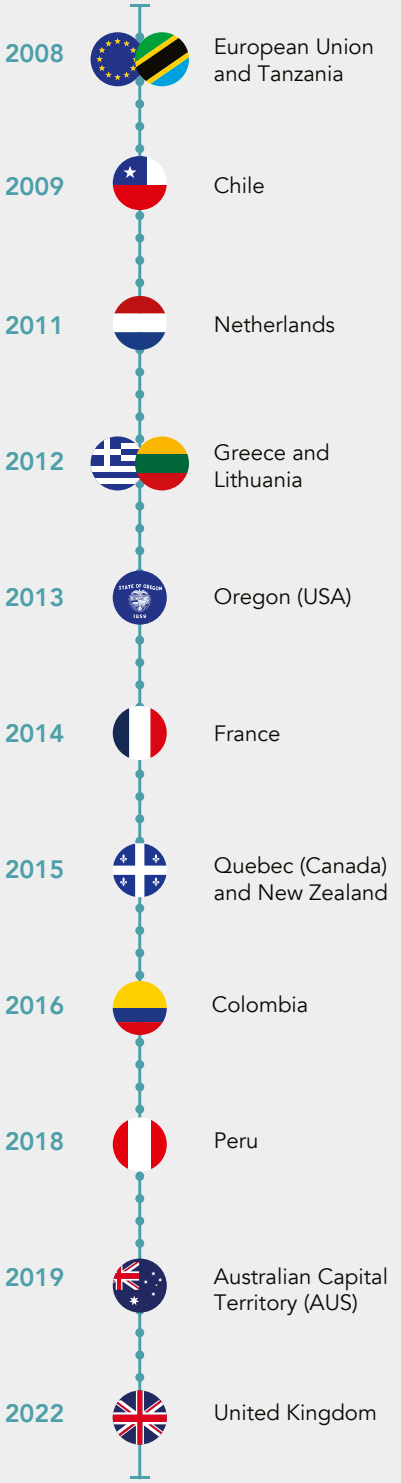
Objects of Act

The objects of this Act are to achieve the following:

- recognise that animals are sentient beings with intrinsic value.

The first Australian jurisdiction to recognise animal sentience in its Animal Welfare Act was the Australian Capital Territory (ACT) in 2019.[86] Encouragingly, a number of other Australian jurisdictions look set to follow. The Victorian Government recently flagged its intention to recognise animal sentience, and the Western Australian (WA) Government has endorsed a recommendation to amend the objects of its animal welfare legislation to expressly recognise that "animals are living beings, able to perceive, feel, and have positive and negative experiences."[87]

Animal sentience recognition on the rise across the world



7.3 Benefits

Global experience with the legal recognition of animal sentience demonstrates that it is an essential and uncontroversial reform which offers the following five key benefits for improving animal welfare.

Provides a science-based standard for protection

Modern animal welfare legislation should be guided by best available science and reflect advances in scientific understanding about animal intelligence and capabilities. Sentience provides a science-based standard for animal protection, thereby mitigating the common practice of determining legislative standards for animals based on subjective or utilitarian factors such as "their attractiveness, their appearance, their similarity to humans, or their emotional proximity to humans".[88]

One of the core deficiencies of current Australian animal welfare legislation concerns the arbitrary nature of the standards of care afforded to different species of animals based on the contexts in which they are used. By creating a science-based standard for protection, legal recognition of animal sentience goes some way towards addressing this deficiency by centring the equal sentience of animals at the heart of discussions about animal welfare standard-setting.

Improves legislative consistency

Recognising animal sentience as a cornerstone principle of animal welfare legislation is the first step towards creating a more principled, consistent, and coherent legislative framework. Recognition in the objects of Animal Welfare Acts will encourage respect for animal sentience to run throughout the entire legislative regime,

informing the interpretation and application of the legislation as well as related administrative decisions and standards/guidelines.

The combination of sentience recognition with the proposed decision-making principles would help to build a more coherent legislative structure. Importantly, under this structure it would be much harder to justify prescribing regulations, standards and codes that contradict the duties and offences outlined under the Animal Welfare Acts (see section 8 below for further information on standards development).

Assists with sentencing offenders

Objects clauses are used by judges and magistrates to inform the interpretation of legislation, particularly in cases of ambiguity. In the absence of express recognition of animal sentience, judicial officers are left to form their own conclusions about the purposes of animal welfare legislation, which can vary from an instrumental view (where animal welfare matters to the extent that it benefits humans) to an intrinsic view (where animal welfare matters because it matters to the animal).

These differing interpretations can inform the way animal cruelty offences are conceptualised by judges and magistrates, ultimately impacting on sentencing outcomes. Traditionally, judicial officers have lent towards a more instrumental approach, viewing animal cruelty matters as simple misdemeanours – a form of anti-social deviant conduct that should be discouraged but is considered at the lower end of the scale of seriousness, meriting relatively minor penalties.

According to this perspective, the animal is not seen as a victim of the offending conduct, but simply as an element of the offence; an approach which risks trivialising serious cases of cruelty. As long as animal cruelty offences are conceptualised as minor offences, judicial officers will avoid applying maximum penalties, even in the most concerning cases.

Recognising animal sentience in the objects of animal welfare legislation signals to judicial officers the underlying reasons why promoting animal welfare and preventing cruelty is important. By encouraging judicial officers to view abused animals as victims, sentience recognition could lead to more informed sentencing decisions better reflecting the community's views on the seriousness of animal cruelty offences.

Improves Australia's international reputation

Recognising animal sentience is also important for Australia's international reputation. At least nineteen jurisdictions around the world have recognised animal sentience in some form, including the UK, New Zealand, and the entire EU. As countries move to include recognition of animal sentience under their animal welfare laws, the absence of such recognition in Australia is becoming increasingly more noticeable and problematic on the global stage.

As noted earlier, Australia was recently awarded a 'D' grade under the Animal Protection Index (API); a well-respected index ranking fifty countries around the world according to their animal welfare policy and legislation.[89] This indicator of Australia's international animal welfare standing should be of concern to the Australian Government, especially given that many non-government organisations, multi-national food companies, institutional investors, and government advisors draw on the API for guidance on a nation's animal welfare record.

ACT leading the way

The Australian Capital Territory's Animal Welfare Act was amended in 2019 to recognise that animals are sentient beings, able to subjectively feel and perceive the world around them. The Act also recognises that animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value.

As an advanced and economically prosperous nation with significant animal-based industries, it is unfortunate that Australia's ranking is so low compared with many equivalent nations around the world. Recognising animal sentience under state and territory animal welfare legislation would constitute an important step towards improving our international reputation on animal welfare.

Facilitates trade and market access

Recognising animal sentience and improving Australia's low animal welfare ranking would also have beneficial outcomes for Australia's trade and market access.

The Australian Government is currently negotiating a Free Trade Agreement (FTA) with the EU and recently concluded an FTA with the UK. Each of these markets is extremely sensitive to animal welfare, evidenced by the insistence of both EU and UK officials on including prominent animal welfare provisions in their respective agreements.

The Australia-UK FTA was signed in 2021 and contains a dedicated chapter on animal welfare stating that both parties recognise that "animals are sentient beings".[90] The EU has also foreshadowed its desire for animal sentience to be recognised in the agreement currently being negotiated with the Australian Government.

Recognising sentience under the Animal Welfare Acts would provide further assurances to trading partners that Australia

takes animal welfare seriously and has enacted modern animal welfare laws that reflect contemporary scientific knowledge and community expectations. Sentience recognition is a central feature of modern animal welfare law, which would improve the functioning of animal welfare legislation and position Australia well for meeting future community and trade expectations.

Novel approach to sentience recognition in the UK

In 2022, the UK Parliament passed legislation recognising animal sentience and establishing a world-first 'Animal Sentience Committee'.[91] The Committee assesses and reports on whether the government has given sufficient regard to how policies may have adverse effects on the welfare of animals as sentient beings.

Although the government is required to respond to the Committee's reports in Parliament, it is not required to act on the Committee's recommendations. Despite the Committee's limitations, the reporting process is a positive development with the potential to significantly "increase accountability and openness on animal welfare issues in parliament".[92]

Recommendation 4

Establish the following decision-making principles under state and territory Animal Welfare Acts that apply to decisions made under those Acts and to any decision of a minister, department or authority that impacts animal welfare:

- The minimum standard of care requirements outlined in the Act should be met for all animals in the care or control of people
- Harm, pain or distress for animals should be avoided
- Where scientific evidence demonstrates that a practice causes adverse welfare outcomes it should be prevented or phased out
- Failing to meet the minimum standards of care or causing harm, pain or distress to animals should only be permitted in exceptional and temporary circumstances where:
  - there are no other alternative means of achieving the intended outcome in a way that meets the minimum standards of care or avoids the harm, pain or distress
  - all reasonable steps have been taken to reduce the harm, pain or distress as much as possible (for example, through the use of appropriate pain relief), and
  - the harm, pain or distress is proportionate to the outcome sought to be achieved having regard to the sentience of animals and the purposes of the Act.

Image: Jo-Anne McArthur / We Animals Media

Recommendation 5

Establish a power for the Minister responsible for animal welfare to compel other ministers, departments, and authorities to apply the decision-making principles.

Recommendation 6

Recognise the sentience of animals and their intrinsic value in the objects provisions of state and territory animal welfare legislation.

8 Fair and accountable standards development

The process for developing national animal welfare standards is ad hoc, not fit for purpose and dominated by industry interests. Australia needs a new process based on independent governance, balanced and inclusive stakeholder representation, independent scientific literature review, and meaningful public consultation.

8.1 Fair and transparent process

As noted at section 2, the current process for reviewing and developing national standards for animal welfare in Australia is not fit for purpose. The process is dominated by industry interests, fails to properly take into account contemporary scientific knowledge and community expectations, and lacks legislative accountability. Reforming the process is necessary to create a more inclusive, science-based, and accountable standards development framework for Australia.

The design of modern standard-setting frameworks places as much emphasis on the process for developing standards as it does on the outcome of the standards. This is because the process is inextricably linked to the acceptance of the outcome by key stakeholders and the community.[93] The independence of management, the quality of consultation, the validity of evidentiary foundation, and the transparency of decision-making are all fundamental components to producing a robust and credible standard-setting framework.

Australia's animal welfare framework currently lacks a formalised approach to standard-setting. The process for developing or reviewing a given standard is determined by the relevant state or territory that volunteers to lead the process. A more formalised and consistent framework is required to give stakeholders and the community greater certainty about the process for developing national standards.

New Zealand delegates the standards development role to its National Animal Welfare Advisory Committee (NAWAC), an expert committee established under the Animal Welfare Act 1999 (NZ). NAWAC has published a range of guidelines on its approach to decision-making and developing standards, including topics such as the role of science in setting standards, taking account of society's ethical values, and dealing with practices that may be inconsistent with the spirit of the Animal Welfare Act.[94] These guidelines provide stakeholders and the community with clear guidance on both the practical components of the process and the approach NAWAC takes to balancing competing priorities in decision-making. NAWAC also publishes a detailed set of reasons when each Code of Welfare is reviewed explaining the decisions that led to the final standards adopted.[95]

The proposed national Animal Welfare Commission could perform a similar role in developing a formalised standard-setting process for Australia. The process should include the following key elements:

- Independent governance and management
- Balanced and inclusive stakeholder representation
- Independent scientific literature review
- Meaningful public engagement and consultation
- Published reasons for decisions.

8.2 Legislative accountability

While a national Animal Welfare Commission should lead and coordinate the process for developing national animal welfare standards, ultimately the states and territories have responsibility for adopting the standards under law to give them legal effect. Despite the central role played by the standards in achieving the proposed objectives of the state and territory Animal Welfare Acts, the legislation is largely silent on the process and criteria for developing and adopting standards.

To ensure the development process is accountable and achieves the above recommended outcomes, state and territory Animal Welfare Acts should be amended to include certain legislative criteria for the development and adoption of standards. The criteria should apply to all standards intended to be adopted under the legislation, whether developed at a national or state level.

Animal Welfare Acts across the country generally only state that regulations "may" make codes or standards about animal welfare, providing a non-exhaustive list of topics.[96] The lack of criteria for the standards-making process allows for the adoption of standards that enshrine cruel and harmful practices which contradict the purpose of animal welfare legislation. Such practices are protected through the use of wide-ranging exemptions and defences built into the Animal Welfare Acts, effectively creating a two-tiered animal welfare system.[97] This oversight has led to animal welfare legislative frameworks that lack coherent principle and consistency between primary and subordinate legislation.

The lack of criteria for the standards-making process allows for the adoption of standards that enshrine cruel and harmful practices which contradict the purpose of animal welfare legislation.

Modern animal welfare law establishes decision-making criteria for the adoption of welfare standards to ensure consistency and accountability in the development process. New Zealand's Animal Welfare Act 1999 provides a good case in point. It sets out in detail the process for how 'Codes of Welfare' and regulations are to be made under the Act, including the involvement of NAWC in the preparation of the codes, public notification and consultation requirements, and factors that must be considered. These factors include consistency with the purpose of the Act, public and stakeholder submissions, relevant scientific knowledge, and available technology.[98]

Proposed codes are also required to be tabled in the House of Representatives, and the Act restricts regulations from prescribing standards that do not fully meet the legislation's duty of care obligations.[99] Although exceptions can be granted to avoid negative impacts on industry, after a period of 10 years the regulations must be brought into line with the Act's duties and obligations.

Provisions like this ensure that the process for making welfare standards and codes is more consistent and accountable, which ultimately leads to a more robust and coherent legislative framework. This is highly important in the Australian context, considering that regulations and codes determine the welfare of millions of animals who currently sit largely outside the protection of the Animal Welfare Acts.

For this reason, state and territory animal welfare legislation should establish similar decision-making criteria to ensure that standards adopted under Animal Welfare Acts are developed in an equally consistent and accountable manner. This should also include a periodic review period built into the legislation to ensure the standards are regularly updated to reflect current scientific knowledge and community expectations.

Additionally, the role of state and territory Animal Welfare Advisory Committees should be formally recognised in this process under the Animal Welfare Acts. The legislation should establish the Animal Welfare Advisory Committees with a balanced membership consisting of experts in fields such as animal welfare science, law and regulation, economics and trade, ethics, public policy, animal husbandry and production, and animal welfare advocacy.

These recommendations could be given effect through a simple addition to the regulation-making provisions of the Animal Welfare Acts in the following form:

Making and adoption of standards

(1) A regulation may make standards about animal welfare that are:

(a) based on good practice, contemporary scientific knowledge and technology, community expectations, and advice from the Animal Welfare Advisory Committee

(b) not inconsistent with the objects, principles and duties prescribed in sections [insert relevant sections] of the Act, and

(c) reviewed within 10 years to ensure they continue to comply with (a) and (b).

Requiring such criteria to be met under state and territory law would greatly improve the accountability of the process. Although the criteria would be prescribed under state/territory law, to save governments from having to duplicate efforts to meet the criteria, the criteria could be satisfied through the national standards development process.

8.3 Benefits

Establishing a formalised standard-setting framework that includes the elements discussed above would have the following key benefits:

- Greater certainty and transparency about process and decision-making
- Stronger buy-in and participation by stakeholders and the community
- Higher levels of acceptance of the outcomes of the process
- More robust, evidence-based animal welfare standards.

Image: Jo-Anne McArthur / We Animals Media

Recommendation 7

Establish a formalised national standard-setting framework that includes the following key elements:

- Independent governance and management
- Balanced and inclusive stakeholder representation
- Independent scientific literature review
- Meaningful public engagement and consultation
- Published reasons for decisions.

Recommendation 8

Introduce requirements for the making and adoption of animal welfare standards and guidelines under state and territory animal welfare legislation, requiring them to be:

- Based on good practice, contemporary scientific knowledge and technology, community expectations, and advice from the Animal Welfare Advisory Committee
- Not inconsistent with the objects, principles and duties of the legislation, and
- Reviewed within 10 years to ensure they continue to comply with these requirements.

For the first time in a decade Australia has a real opportunity to achieve meaningful systemic reform for animals.

A fair go for animals

For too long, Australia's animal welfare system has been captured by animal use industries. Laws purporting to protect animals have been co-opted to enshrine harmful practices that benefit the commercial interests of industry to the detriment of the public's interest in animal welfare. Under current standard-setting processes, animal welfare science and the community's expectations are routinely ignored and animals used for commercial purposes are reduced to commodities. The system is outdated, unscientific and undemocratic, and it must change. For the first time in a decade Australia has a real opportunity to achieve meaningful systemic reform for animals.

Fortunately, the solutions are within reach. By implementing the reforms recommended in this report we can create a fairer and more balanced animal welfare system that works for animals, not against them.

Increasing independence and integrity

Currently the system is hindered by problematic conflicts of interest which jeopardise animal welfare policy-making right from the outset. By separating government responsibility for animal welfare away from agriculture ministers and departments we can remove these conflicts of interest and build greater independence into the animal welfare governance framework. In doing so, we can improve the system's integrity and ensure the public's interest in animal welfare is properly reflected in resulting policy and standards.

Promoting consistency and accountability

The system is further limited by a lack of legislative guidance and decision-making principles, resulting in arbitrary and inconsistent animal welfare standards and regulatory decisions. Establishing decision-making principles that apply across government to any regulatory or policy decisions that impact animal welfare will increase consistency and accountability.

Further, introducing legislative criteria for the development and adoption of standards requiring decision-makers to properly consider community expectations and animal welfare science will ensure the development process is inclusive and science-based. Ultimately, these reforms will lead to more robust animal welfare protections.

Building a fairer Australia for animals

Together, we can build a fairer Australia for all animals where animal welfare standards meet community expectations, science is valued, decision-making is transparent, and animals are treated in a way that respects their sentience and protects their welfare.

#FairGoForAnimals

Want to take action to help build
a fairer Australia for all animals?

Sign the pledge online to show your support.

Visit: www.fairgoforanimals.org.au

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