



Productivity Commission
GPO Box 1428
Canberra City
ACT 2601

26 August 2016

Dear Sir/Madam

Submission on the Regulation of Agriculture

Thank you for the opportunity to provide a submission in relation to the inquiry to examine the regulation of agriculture in Australia.

About the Animal Defenders Office

The Animal Defenders Office (ADO) is a non-profit, community law practice that specialises in animal law. The ADO offers information and representation for individuals and groups wishing to take action for animals. The ADO also produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres NSW Inc and the National Association of Community Legal Centres.

Our responses to key recommendations and previous questions on the issues of animal welfare in agriculture are set out below.

Draft Recommendation 5.1

The ADO strongly supports draft recommendation 5.1, for an independent body to develop standards and guidelines for farm animal welfare. There should also be recommendations to state and territories for comparable bodies to be developed at their level. The body should take the form of an Independent Office for Animal Welfare (IOAW), similar to that previously proposed to Parliament in the Voice for Animals (Independent Office of Animal Welfare) Bill 2015.

The body should be located separately from the Department of Agriculture and Water Resources to avoid conflict of interest. It should be federally funded and tasked with developing a uniform set of standards for animal welfare. Further, the IOAW should be empowered to investigate and issue reports and recommendations on current key issues on animal welfare. For example, an inquiry into live export could be undertaken by the IOAW.

The IOAW should also have the power to receive reports on breaches of animal welfare standards which it has developed, and investigate and enforce such breaches. In addition, the

IOAW should consist of an advisory council to determine the relevant community standards of animal welfare, as well as being receptive to recommendations from members of the public. The council can be made up of a variety of animal experts, agriculture experts and community members.

States and territories should also be able to maintain and enforce higher standards of animal welfare where these have already been legislated prior to the independent body developing its standards and guidelines.¹

Draft Recommendation 5.2

The ADO supports this recommendation.

The RSPCA is the main body responsible for enforcing animal welfare laws in Australian jurisdictions.² It has approximately 100 inspectors across the country.³ It is unacceptable to have a private charity with so few inspectors responsible for enforcing our animal welfare laws and requirements. Australia is a vast continent with several 100 million animals raised for food⁴ in a wide variety of enterprises. Yet prosecutions for cruelty to livestock constituted only 9%, or 24 in total, of RSPCA prosecutions according to the last available data.⁵ Its rate of routine inspections of animal enterprises (including but not limited to agricultural enterprises) is also extremely low compared to the large number of such enterprises operating in Australia. In 2011/12 the RSPCA conducted 327 routine inspections across the nation. By 2014/15 this number was down to 216.⁶ It is unreasonable to expect a privately funded charity to be able to monitor compliance with our animal welfare laws adequately.

Currently the main source of information about farm animal welfare monitoring and enforcement is RSPCA Australia. Again, this is unacceptable in a developed country that prides itself on its allegedly high animal welfare standards. The ADO supports any recommendation to implement a transparent process for publicly reporting on monitoring and enforcement activities in relation to farm animal welfare.

Animal welfare laws are worthless if monitoring and enforcement are not sufficiently resourced. The ADO would therefore support changes by state and territory governments to their monitoring and enforcement functions for farm animal welfare, if those changes include:

¹ For example, the ACT's ban on certain types of accommodation for pigs and chickens, which is higher than any other standard: *Animal Welfare Act 1992* (ACT) ss 9A, 9B.

² There is no RSPCA inspectorate in the Northern Territory.

³ RSPCA, <https://www.rspca.org.au/animal-cruelty>

⁴ Australian Bureau of Statistics, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/7121.0main+features82012-2013>.

⁵ RSPCA National Statistics 2011-2012 <https://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA%20Australia%20National%20Statistics%202011-2012.pdf>

⁶ RSPCA National Statistics 2014-2015 https://www.rspca.org.au/sites/default/files/website/The-facts/Statistics/RSPCA_Australia-Report_on_animal_outcomes-2014-2015.pdf

1. Establishing an independent authority responsible for farm animal welfare monitoring and enforcement functions; and
2. Providing sufficient resources to the authority to allow it to monitor, inspect and audit all farm animal enterprises at least once in a reporting period (which should be no more than 12 months); and
3. Requiring the authority to report publicly at least once a year on its monitoring and enforcement activities.

Do existing animal welfare regulations (at the Australian and state and territory government levels) efficiently and effectively meet community expectations about the humane treatment of animals used in agriculture production?

The ADO submits that existing animal welfare regulations do not effectively meet community expectations about the humane treatment of animals use in agriculture production. Animal welfare regulation is currently within the responsibilities of government departments whose primary goals are ensuring the productivity of the Australian agricultural sector, the interests of which are often in conflict with the interests of animals. This blatant conflict of interest and the lack of transparency around modern farming practices have led to a culture of acceptable cruelty towards farm animals in pursuit of the highest possible economic return.

When community awareness campaigns about animal agriculture are run by not-for-profit organisations such as Animals Australia, the public reaction tends to be one of shock and surprise. For example, covert footage taken of cruelty at a piggery near the ACT was the subject of significant media attention and outrage.⁷ The ADO submits that most Australians may not be fully aware of animal welfare regulations and tend to assume animals used in agriculture are treated “humanely”, without full knowledge of what practices are allowed or commonplace.

There are also minimal food labelling requirements related to the treatment of animals used for food production. Recent misleading and deceptive conduct claims launched by the Australian Competition and Consumer Commission in relation to agricultural produce labelled as “free range” or “free to roam” indicates that there is an extreme disparity between community expectations of animal welfare in agriculture production and the actual animal welfare standards maintained.

Pressures from the community have also led to commitments from Australian businesses to fill the gap between regulated animal welfare standards and community expectations of animal welfare standards. For example, Woolworths supermarkets are phasing out the sale of cage eggs by 2018 and Subway and Hungry Jacks have committed to move cage eggs from their menus. In order to meet consumer demands, these businesses have committed to higher welfare standards before such standards are mandated by legislation. This suggests a level of community expectation which is higher than the government currently provides.

⁷ Daniel Noone, Daily Telegraph: Video shows abattoir staff abusing pigs 2 May 2014
<http://www.dailytelegraph.com.au/news/video-shows-abattoir-staff-abusing-pigs/story-fni0cx4q-1226903667826>

Do animal welfare regulations materially affect the competitiveness of livestock industries, and if so how?

Australia is lagging behind other developed countries in their animal welfare standards. In 2014, *World Animal Protection* launched an index called the Animal Protection Index. This Index establishes a classification of 50 countries around the world according to their commitments to protect animals and improve animal welfare in policy and legislation. Australia scored an overall C along with Brazil, India, Malaysia and the Philippines.⁸ As consumers are becoming increasingly aware of the implications of the products they are purchasing, our current animal welfare regulations may reduce our market access and competitiveness in the export market for Australian produce, particularly to countries where there are much higher animal welfare standards.

Currently, higher welfare producers are likely to earn a lower return rate on agricultural products as charging higher prices to cover the additional cost that come with lower density production systems may make their products less competitive. This has led to a long-term focus on profit to the detriment of animals. Strengthening labelling requirements may improve this. Overall, however, the ADO submits that animal welfare should be considered entirely separately – and in preference to – economic factors. The purpose of welfare laws should be to protect sentient beings from harm and eliminate cruelty, and the definitions for appropriate treatment considered based on the potential for suffering, rather than based on the competitiveness of an industry. Persistently considering economic factors in tandem with animal welfare is not likely to lead to a system with adequate welfare outcomes. Setting high animal welfare standards and encouraging existing producers to operate within this welfare system will ultimately be more beneficial in the long run as there will be improved consumer confidence and willingness to pay for appropriate welfare standards.

What are the reform priorities for animal welfare regulations, if any, and have recent reforms, for example in relation to the ESCAS [the live export ‘assurance’ scheme], delivered net benefits to the community.

The creation of an Independent Office of Animal Welfare is a crucial step in ensuring that there is an impartial monitoring of the welfare of animals, with the responsibility removed from any authorities which may have a conflict of interest. The ADO submits that also implementing clear uniform laws and regulations will alleviate industry confusion and protect the welfare of animals more effectively.

The current animal welfare laws and regulations operating in Australia and in connection with our international agricultural exports lack consistency and appropriate surveillance. Given the readily available evidence and research of animal suffering and animal welfare issues prominent in the agricultural industry today⁹, new laws need to be in place with strong regulatory and enforcement bodies to reduce incidents of misconduct and ensure compliance.

⁸ Available at <http://api.worldanimalprotection.org/>

⁹ See Commonwealth of Australia (2011) *Independent Review of Australia's Live Export Trade*, Peter Sankoff, Steven White, Celest Black, *Animal Law in Australasia*, Federation Press, second edition. Animals Australia website - article on factory farming reports produced in the United States, http://www.animalsaustralia.org/features/PEW_report_condemns_factory_farming.php

Reforms such as ESCAS (2011) have not demonstrated a significant positive change for animal welfare standards as continuous ill treatment of animals has been documented by non-profit organisations such as Animals Australia and community confidence in such systems has waned.¹⁰

In January 2015 the Australian Government released a report which assessed the effectiveness of the new system from 2011 to 2014. The report stated that it is ‘difficult to isolate the ESCAS operation and compliance costs’ and the only “benefits” from the reform that were noted was the continuation of live exports.¹¹ The administration of ESCAS from 2013- 2014 was estimated in this report to be \$5.7 million.¹²

Based on this estimation, ESCAS is considered by the Department of Agriculture as a time consuming and costly regulation. In 2015 a spokesperson for the Department of Agriculture stated in an ABC news report that the Department intended to reduce the number of audits in low-risk facilities to one a year. It was estimated that this would save \$2 million on these administrative costs, which clearly demonstrates the Australian government’s focus on financial savings rather than the protection of animal welfare.¹³ The ADO submits that the reduction in annual audits is an extremely regrettable step in regulating the live export industry. It provides little assurance that animal welfare will be safeguarded, let alone improved. The ADO also submits that if such significant changes are deemed “necessary” since the initial implementation of ESCAS in 2011, then this type of regulation is clearly not economically sustainable for the future of agriculture.

According to figures released by Animals Australia and The Australian Institute in 2014, Australia’s live export industry only accounts for 0.4% of all Australian exports.¹⁴ This significantly small portion of Australia’s economic revenue sends a clear message that other viable options should be considered for the future of Australia’s agricultural economy. The \$5.7 million of ESCAS administration can be better spent creating clear animal welfare laws and regulations to reduce animal suffering within Australia’s jurisdictions.

Aside from the above observations, the ADO submits that the success of a regulation such as ESCAS should not be measured primarily on its deliverable ‘net benefits’ to the community as this detracts from the objectives of preventing animal suffering and promoting animal welfare, which was 50% of the motivation for implementing ESCAS in the first place in 2011.¹⁵

¹⁰ Farming Ahead, ‘*Livestock exports suspended to Vietnam, ESCAS under fire*’ 17 June 2016, <http://www.farmingahead.com.au/articles/1/12136/2016-06-17/news/livestock-export-suspended-to-vietnam-escas-under-fire>

¹¹ Australian Government, *Exporter Supply Chain Assurance System (ESCAS) Report*, January 2015, page 38.

¹² Australian Government, *Exporter Supply Chain Assurance System (ESCAS) Report*, January 2015, page 40.

¹³ Sarina Locke, ABC News: Audits slashed as Government helps livestock exporters reduce ESCAS costs, 25 March 2015, <http://www.abc.net.au/news/2015-03-25/government-reduces-audits-live-export-facilities-escas/6347444>

¹⁴ Animals Australia Website, *Economic infographic: live export in perspective*, 9 May 2015, <http://www.banliveexport.com/features/live-export-in-context.php>.

¹⁵ Australian Government Productivity Commission, *Regulation of Australian Agriculture: Productivity Commission Draft Report –Overview* July 2016 , page 20.

How do variations between state and territory animal welfare regulations affect livestock businesses and/or consumers?

State and territory laws on animal welfare have a common thread between them which is to prevent cruelty to animals by prohibiting ‘unreasonable, unjustifiable or unnecessary suffering’, and to promote a duty of care towards animals. However, the definition and treatment of actions that are contrary to animal welfare vary between each statute.¹⁶ These variations inevitably have an impact on how these industries are regulated across the states and territories and who may be held liable for any misconduct.

There is a large scope for systematic animal abuse in Australia’s agricultural industry given the nature of its practices and the different modes of regulation, codes and guidelines involving numerous separate departments and industries. This inhibits appropriate surveillance overall and without mandatory reporting on animal welfare outcomes, the motivation to report animal welfare breaches is voluntary. The ADO submits that without an independent and overarching regulatory body – an Independent Office of Animal Welfare – reviewing and managing animal welfare laws and industry guidelines, businesses are unlikely to reveal instances of non-compliance with welfare requirements due to the potential negative impact on their business objectives.

Moreover, animal welfare legislation in each state and territory allows ‘necessary’ suffering and numerous defences for cruelty. These exemptions mean that even livestock businesses with the best intentions may fall short of community animal welfare expectations or reporting those involved in the industry for improper treatment of animals.

This lack of transparency and confusion between welfare laws mean consumers are potentially misinformed by the information available from marketing, product packaging and independent investigations. This has a significant effect on the purchasing decisions of consumers, which, as the consumer-to-demand principle demonstrates in commerce today, those that ‘get away’ with a clean reputation reap the benefits as a successful business.

The ADO submits that implementing animal welfare standards that are clear, high-level, and uniform will encourage compliance by industries and individuals subject to them, without the confusion and crossover between jurisdictions. With an independent regulatory body that deals with animal welfare issues in particular, inquiries could be made and dealt with efficiently and quickly. Imposing higher animal welfare standards on businesses would enhance rather than hinder their market appeal. This is demonstrated by many businesses that have taken an eco-friendly approach over the last few decades.¹⁷

¹⁶ *Animal Welfare Act 1992* (ACT) s 6A (a), *Prevention of Cruelty to Animals Act 1979* (NSW) s 4, *Animal Welfare Act 1999*(NT) s 9 (3)(a), *Animal Care and Protection Act 2001* (QLD) s 18, *Animal Welfare Act 1985* (SA) s 13 (3)(a), *Animal Welfare Act* (TAS) 8(a), *Prevention of Cruelty to Animals Act 1986* (VIC) s 9, *Animal Welfare Act 2002* (WA) s 19.

¹⁷ Richard A. Clarke, Robert N. Stavins, J. Ladd Greeno, Joan L. Bavaria, Frances Cairncross, Daniel C. Esty, Bruce Smart, Johan Piet, Richard P. Wells, Rob Gray, Kurt Fischer, Johan Schot, ‘*The Challenge of Going Green*’ Harvard Business Review <https://hbr.org/1994/07/the-challenge-of-going-green>.

Thank you for the opportunity to provide a submission to this inquiry.

Animal Defenders Office