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The Social Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
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Sent via email to: SPSC@nt.gov.au

20 March 2018

Dear Committee,

Submission regarding the *Animal Protection Bill 2018* (NT)

Thank you for your email of 9 February 2018 inviting Lawyers for Animals ("**LFA**") to contribute to the Social Policy Scrutiny Committee's inquiry into the *Animal Protection Bill 2018* (NT) ("**the Bill**"). Thank you also for your Secretary's agreement to extend the due date for LFA's submission by ten and a half days, to 20 March 2018, to make this limited contribution by LFA possible. Prior to your email alerting LFA to the Bill's existence, LFA was (unfortunately) unaware of the Northern Territory Government's intention to repeal and replace the existing *Animal Welfare Act 1999* (NT).

While commending certain measures contained within the Bill, unfortunately, for the reasons below, Lawyers for Animals lacks confidence that the Bill will achieve the first three of its four stated objects, namely:

- a) to ensure that animals are treated humanely; and

- b) to prevent cruelty to animals; and
- c) to promote community awareness about responsibilities and legal obligations associated with the care and protection of animals.¹

Lawyers for Animals is aware that this submission is unlikely to affect the outcome of this inquiry, nor to convince the Northern Territory Government to reclaim its democratic responsibility for farmed animal welfare (in particular) from industry control. This devolution of power to industry is currently facilitated through the federal Department of Agriculture and Water Resources' program, persuasively named the 'Australian Animal Welfare Strategy', and funded by Australian taxpayers. However, Lawyers for Animals recognises that in regard to this abdication of political and moral authority, the Northern Territory is less culpable than the States, since it does not possess the same degree of independence from federal government control.

The Bill gives significant power to the Chief Executive Officer ("CEO") of the regulatory agency, rather than vesting such authority in an Animal Welfare Authority under direct Ministerial oversight. LFA recognises the potential for this initiative to be useful in improving animal welfare, by ensuring that the CEO is aware of the day to day needs of an agency responsible for animal welfare in the Northern Territory. However, LFA notes that the success of this initiative will very much depend on the personal integrity, skills and background experience of the CEO, which will in turn be determined by whom they are selected, and under what form of tenure. Were an animal industry appointee to fill the position, for instance, LFA would consider the move significantly regressive. Naturally, the funding of the regulatory agency will also significantly impact its effectiveness in policing animal cruelty, as will the funding of specific training or (preferably) a specific Northern Territory police unit to develop expertise in animal cruelty law enforcement. LFA refers the Committee to world's best practice in this regard, as outlined in LFA's 2016 submission to a Victorian government inquiry, available here:

<http://lawyersforanimals.org.au/wp-content/uploads/2017/03/LFA-RSPCA-Vic-Govt-subn-060317.pdf>

Who we are

Formed in 2005, Lawyers for Animals ("LFA") is a not-for-profit incorporated association based in Victoria, run by an executive committee of lawyers and with members in various Australian States and Territories.

LFA's objectives include:

¹ *Animal Protection Bill 2018* (NT) (hereafter "**the Bill**"), Section 3

1. alleviating the suffering of animals by engaging with those who create or administer laws in Australia to strengthen legal protections for animals;
2. promoting better animal welfare practices amongst animal-related industries in Australia; and
3. undertaking educational activities in an effort to dispel myths and increase awareness relating to animals and the law.

Since April 2013, LFA has also worked in partnership with the Fitzroy Legal Service in Melbourne to provide the Animal Law Clinic: a free legal advice service with the primary objective of improving animal welfare.

LFA's approach to the Bill

LFA is guided by a philosophical commitment to anti-speciesism. The term 'speciesism' was first coined by British psychologist Richard Ryder in 1973², but gained greater prominence through Professor Peter Singer's 1975 book, *Animal Liberation*³. In a nutshell, 'speciesism' connotes the prejudice that most humans practise towards members of other animal species, based on their physical differences, while ignoring their physiological, mental and emotional similarities. Speciesism may be more easily understood by reference to the closely related concepts of 'racism' and 'sexism'. The fact that almost all farmed animals were plant-eating, passive, prey animals - physically and mentally unequipped to challenge the human apex predator - made them an easy source of high-fat food for our less agriculturally advanced and therefore food-challenged ancestors. It is likely that the historical reliance on killing animals for food encouraged human predatory instincts towards such animals, helping to stem empathy, and thus encourage speciesism. When people are 'racist', 'sexist' or 'speciesist', they consider one group - almost always their own - to have superior value, and therefore, superior rights, to another physically distinct group. In all three cases, the underlying physiological, mental and emotional similarities between the groups are ignored, sometimes at a subconscious rather than conscious level.

While humans and animals generally differ in both their level and range of intelligence - be it intellectual, emotional, sensory or kinetic - not all humans are more intelligent than animals. But it is not by reason of intelligence, alone, that human or animal life holds value. In discussing this question, British Enlightenment philosopher, abolitionist and legal scholar, Jeremy Bentham, wrote:

² Richard Ryder, 'All beings that feel pain deserve human rights', *The Guardian*, 6 August 2005 viewed 02/03/2018 at: <https://www.theguardian.com/uk/2005/aug/06/animalwelfare>

³ Peter Singer, *Animal liberation: A new ethics for our treatment of animals*, 1975, New York: New York Review

The day has been, I am sad to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing, as, in England for example, the inferior races of animals are still. The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the villosity [or hairiness] of the skin, or the termination of the os sacrum [the tailbone - where an animal's tail commences] are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer?⁴

Since there is ample scientific evidence that animals experience physical pain and psychological stress in a similar way to humans⁵, as an anti-speciesist organisation, LFA strives to prevent and alleviate the suffering of all sentient animals.

LFA accordingly supports the normative rule that, to the extent animals are under human control or influence, humans are obligated to uphold 'The Five Freedoms'⁶ towards them. The Five Freedoms – or basic rights – of animals are:

1. freedom from hunger, thirst and malnutrition;
2. freedom from fear and distress;
3. freedom from physical and thermal discomfort;
4. freedom from pain, injury and disease; and
5. freedom to express normal patterns of behaviour.⁷

⁴ Jeremy Bentham, Introduction to the Principles of Morals and Legislation, 1789, chapter 17, footnote

⁵ For research links and information see: Marc Bekoff 'After 2,500 studies it's time to declare animal sentience proven', 6 September 2013, LiveScience website viewed 18/03/2018 at:<https://www.livescience.com/39481-time-to-declare-animal-sentience.html>

⁶ An early version of 'The Five Freedoms' was enunciated by the UK Government body, the Farm Animal Welfare Council, shortly after its formation in 1979. It drew on conclusions in the 1965 'Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems', which was commissioned by the UK Government partly in response to concerns raised by Ruth Harrison's 1964 book 'Animal Machines'. The Five Freedoms are now recognised by animal organisations worldwide, including the World Organisation for Animal Health (better known by its historical acronym: OIE); various Societies for the Prevention of Cruelty to Animals (SPCAs); and various veterinary organisations including the Australian Veterinary Association and the Federation of Veterinarians of Europe.

⁷ This version of The Five Freedoms is taken from OIE, Terrestrial Animal Health Code, Ch.7.1 Introduction to the Recommendations for Animal Welfare, viewed 1/3/2018: http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_aw_introduction.htm

LFA is committed to the ideal of alleviating animal suffering by seeking to uphold these basic animal rights. However, LFA is an incrementalist organisation, working to achieve practical benefits for animals at a time when human civilisation is still largely transitioning from speciesism. Therefore, LFA supports legal reforms that will, on balance, improve animal welfare in both the short and long term. It is this principled yet pragmatic approach that guides LFA in its response to the current Bill.

Terms of reference and submission structure

LFA recognises that the Committee is tasked with reporting to the Legislative Assembly under the following terms of reference:

- (i) whether the Assembly should pass the bill;*
- (ii) whether the Assembly should amend the bill;*
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and*
 - (B) is consistent with principles of natural justice; and*
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and*
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and*
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and*
 - (F) provides appropriate protection against self-incrimination; and*
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and*
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and*
 - (I) provides for the compulsory acquisition of property only with fair compensation; and*
 - (J) has sufficient regard to Aboriginal tradition; and*
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.**
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether a bill:
 - (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and*
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and*
 - (C) authorises the amendment of an Act only by another Act.**

Based on these Terms of Reference, and for ease of reference, the remainder of this submission is divided into two parts:

1. General issues:

- (a) Governmental framework and proposed procedural reforms**
- (b) The Australian Animal Welfare Strategy and how it operates**

(c) **Towards a 'world's best practice' baseline for animal welfare**

2. Specific issues

(a) **Initiatives within the Bill that LFA commends**

(b) **LFA's proposed amendments to the Bill**

Conclusion

Unfortunately, due to time and resource constraints LFA is unable to provide comments on the Bill concerning Terms of Reference (iii) and (iv), above, namely: the rights and liberties of individuals, and regard for the institution of Parliament

Part 1: General issues

(a) Governmental framework and proposed procedural reforms

It is necessary to preface this part of LFA's submission with a brief explanation of the governmental framework and procedure for creating laws in relation to animal welfare in the Northern Territory and in Australia more broadly. The Australian Constitution divides the power to make laws between the Commonwealth and the States.⁸ The power to make laws in a particular area can be: (1) expressed as being exclusive to the Commonwealth; (2) expressed as being exercised concurrently by both the Commonwealth and the States (with Commonwealth laws prevailing to the extent of any inconsistency)⁹; or (3) not expressed at all.

There are several areas of law not expressly mentioned in the Australian Constitution, and animal welfare is one of them. Such 'residual' powers vest in the States.¹⁰ This means that the States have exclusive power to make laws relating to animal welfare, except where other powers held exclusively by or concurrently with the Commonwealth - such as the external affairs power (including domestic implementation of international treaties), and the trade and commerce power - overlap, and the Commonwealth chooses to enact laws in that regard. It is pursuant to such concurrent powers that the Commonwealth makes laws in relation to the live export and slaughter of animals and aspects of wild animal management (both introduced and native), such as the commercial slaughter

⁸ *Commonwealth of Australia Constitution Act*, viewed 1/3/2018 here: <https://www.legislation.gov.au/Details/C2013Q00005>

⁹ *Ibid*, Section 109.

¹⁰ Commonwealth Parliament, 'House of Representatives Practice' (5th Edition), Chapter 1: The Parliament and the role of the House, Powers and Jurisdiction of the Houses, Legislative power, viewed 1/3/2018: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice/chapter1

of kangaroos. However, legislative responsibility for animal welfare rests primarily with the States and each State (and Territory) has enacted such laws.¹¹

The *Northern Territory Self-Government Act 1978* (C'th) grants limited self-government to the Territory, allowing its Legislative Assembly to make laws "... for the peace, order and good government of the Territory" provided such laws are given assent by the Administrator, who is (nominally) appointed by the Commonwealth Governor-General by Commission (in Council with the Federal Government).¹² In practice since 1978, the Administrator has been appointed by the Governor-General in Council acting on a recommendation from the Territory Government. The Administrator has significant power, including the discretion to grant or withhold assent to new laws, and may also return a Bill to the Legislative Assembly with proposed amendments.¹³ Also, any Commonwealth act that binds the States, binds the Northern Territory.¹⁴ While the reduced Constitutional restraint on the making of its laws may, at first glance, seem liberating; in practice, the Northern Territory is unlikely to fall out of step with the Commonwealth without being pulled back into line, for it lacks power to do so, as Dr. Gary Johns explains:

At present, the NT government operates under a number of constraints. The Self Government Act (Cth) allows the Commonwealth to dissolve the NT Parliament at any time, and the laws it makes can be overridden by the Commonwealth. This is illustrated by laws which have been overturned by the Federal Parliament such as euthanasia laws made by the Territory in 1996.

The Commonwealth government has capacity to implement laws and impose decisions over the Territory that could not occur in a state. Two current examples of this are the process used for the Emergency Response (the Intervention) and the consideration process for locating a nuclear waste dump in the Territory.

The Northern Territory's voice in the Commonwealth parliament is limited to two senators compared with 12 senators allocated to each state.

While Territorians can vote in a referendum, the Territory does not count in the Commonwealth constitution's formulation 'a majority of states'.¹⁵

Moreover, if Northern Territorians aspire to the legal independence of Statehood, from a practical perspective, such a step will require significant trust on the part of the Commonwealth, if not also the existing States. Such trust could be damaged by a move by the Territory government to reduce animal industry's control over animal welfare, unless it is undertaken in a way which demonstrates its electoral popularity to the federal government. Cruelty towards the most innocent and vulnerable is inclined to stir strong emotions among decent humans, and efforts to thwart it may indeed

¹¹ As conceded by the federal Department of Agriculture and Water Resources on its website, viewed 1/3/2018: <http://www.agriculture.gov.au/animal/welfare/animal-welfare-in-australia>

¹² *Northern Territory Self-Government Act 1978* (C'th), Sections 6, 7 and 32.

¹³ *Ibid*, Section 7.

¹⁴ *Ibid*, Section 51.

¹⁵ Gary Johns, 'Statehood Stalemate: a modest proposal', 13 May 2011, Public Policy Institute, Australian Catholic University, viewed 18 March 2018, here: http://www.acu.edu.au/___data/assets/pdf_file/0011/352559/Federalism_and_the_Northern_Territory.pdf

prove electorally popular. On the question of statehood for the Northern Territory, Professor Johns further explains:

The least contentious issue in prosecuting statehood is the choice of a legal mechanism by which NT could become the seventh state. New states may be established using s.121 of the Australian Constitution by the Parliament imposing such terms and conditions as it thinks fit'. I believe this is the sensible course to take. Using s.128 of the Australian Constitution to hold a national referendum is unlikely to succeed...

It is likely that the Commonwealth will do nothing unless it believes that there is benefit or at least no cost to them and possibly, to the states. The only benefit for the Commonwealth will be if it believes that it can win a seat in the Territory, or at least, not risk losing one. For example, will Labor offer statehood in a bid to pick up Solomon next time, or the Coalition Lingjari next time? This depends on the ability of the promise of statehood to sway votes. There is no evidence that statehood is a vote changer at the Federal election in the NT.

There are risks in having either a 'big' agenda or in having a 'modest' agenda to take to the Commonwealth. On balance, however, I firmly believe that any unfinished Commonwealth business will not be settled by allowing the NT to finish it ahead of the Commonwealth. It is better to proceed with a modest agenda. Indeed, euthanasia alone has probably killed any chance of statehood. If, however, the NT allows the Commonwealth to continue to reserve legislation in this area it will remove the blocker. My advice is come back to it later, as a state, and when and if Australia catches up you might have your way. I do not think that the Commonwealth will allow NT to be some sort of crucible for experimentation.¹⁶

There is no constitutional provision or law to prevent any or all States and Territories from abdicating direct responsibility for the drafting of animal welfare laws to the Commonwealth. Such delegation of authority is likely to be more attractive if the Commonwealth pays for what purports to be a procedurally fair process, ostensibly involving broad consultation with all stake-holders including animal industry, animal welfare groups and the broader community. This may be seen as particularly helpful for the Northern Territory, which has a lower capacity to raise income than the States, partly due to its higher proportion of unemployed residents.¹⁷

Should the outcome of consultation about animal welfare prove unpopular, the electorate is more likely to hold its respective Territory or State government accountable than the federal government. Animal welfare regulations are not made by the Commonwealth, but by the States and Territories - generally by the Executive Council comprising the premier/chief minister, remaining ministers and governor/administrator, and without any vote in parliament. Although the federal Minister for Agriculture and Water Resources is responsible for the design and implementation of the Australian Animal Welfare Strategy, which oversees the generation of model animal welfare standards and guidelines, the federal parliament has no power to make such laws directly, so federal politicians are less likely to experience the wrath of the electorate over animal welfare concerns at the ballot box.

¹⁶ Ibid

¹⁷ Ibid, pp. 3-4

Some politicians have already experienced the electorate's fury over perceived cowardice in the face of evident animal cruelty. Typically, those politicians have initially been motivated by strong public sentiment to confront the cruelty of a particular animal industry, only to back down under intense pressure from animal industry and its media allies. In June 2011, Prime Minister Julia Gillard suspended live cattle exports to Indonesia following public furore over an ABC Four Corners television program featuring Animals Australia's footage of Australian cattle inside an Indonesian abattoir. One month later, Prime Minister Gillard announced a resumption of the trade, but appears to have paid a heavy price for succumbing to industry pressure, and ignoring public sentiment.¹⁸ Similarly, NSW Premier Mike Baird effectively forfeited his political career by reversing his original announcement of a ban on greyhound racing in NSW, despite apparent public support for the ban.¹⁹ His initial decision to impose the ban followed a damning report on the greyhound industry by a Special Commission of Inquiry headed by former High Court Justice Michael McHugh, and over 18 months of public anger after an ABC Four Corners report in February 2015 featured graphic footage of live-baiting and the indefinite confinement of dogs in cages.²⁰

b) The Australian Animal Welfare Strategy and how it operates

The Australian Animal Welfare Strategy ("**AAWS**") is a policy body established under the auspices of the federal Department of Agriculture and Water Resources to generate model standards and guidelines (formerly, Codes of Practice) for implementation by Territories and States to create a uniform set of detailed regulations (and unenforceable guidelines) in relation to the welfare of animals. In practice, however, LFA observes that compliance with the AAWS standards, once implemented, frequently allows animal industries and their members to evade prosecution for acts

¹⁸ Prime Minister Gillard's approval rating fell from to 50 per cent in February 2011 to 23 per cent in early September 2011 according to Newspoll surveys. The resumption of live exports in July 2011, following a concerted pro-industry media campaign is likely to have played a significant role. Other factors likely to have contributed include strong legal censure of the proposed asylum seeker people swap with Malaysia between May and August; and announcement of carbon tax details in July 2011. Minister for Agriculture at the time of the live export suspension, Sen. Joe Ludwig, did not seek re-election. Following resumption of the trade, an August 2013 Nielsen poll of 1500 voters, commissioned by the World Society for the Protection of Animals, found that 86 per cent of those surveyed supported the gradual phasing-out of live-export in favour of a greater focus on chilled beef and lamb exports; with 67 per cent more likely to vote for a political party or candidate who promised to ban all live exports. Only 14 per cent reported that a ban proposal would cost a candidate their vote. Sue Neales, 'Banning exports a vote winner' 14 August 2013, *The Australian*, viewed 2/3/2018 at: <https://www.theaustralian.com.au/national-affairs/election-2013/banning-exports-a-vote-winner/news-story/2b98faf7975b4abe5b02971af477254c?sv=48a2e7f814f54ac54e38f3e014690083>

¹⁹ Sarah Gerathy, 'Mike Baird: How NSW Premier went from popular to political scrapheap', 19 January 2017, ABC News website, viewed 2/3/2018 at: <http://www.abc.net.au/news/2017-01-19/mike-baird-resigns-how-mr-popular-ended-up-on-the-scrapheap/8193616>
ABC News website, 'Greyhound racing: More than 60pc of people in NSW and ACT support ban, RSPCA says' 8 Oct 2016, viewed 4/3/2018 at: <http://www.abc.net.au/news/2016-10-08/greyhound-racing--60-pc-of-people-support-ban-nsw-canberra/7915334>

²⁰ ABC News website, 'Greyhound racing scandal: NSW Government announces special inquiry amid live baiting expose', 4 March 2015, viewed 4 March 2018 at: <http://www.abc.net.au/news/2015-03-04/nsw-government-to-hold-special-inquiry-into-greyhound-racing/6280670>

and omissions that would otherwise amount to 'cruelty' under various anti-cruelty laws. For instance, Section 21(2) of the Bill specifically provides:

... it is a defence to a prosecution for an offence against this Act if the conduct constituting the offence, or an element of the offence, was in accordance with a code of practice adopted or prescribed by regulation.²¹

The Victorian government's website, on which the model 'animal welfare' standards and guidelines are published, offers the following description of and justification for the AAWS, outlining its relationship to Animal Health Australia ("**AHA**"):

Under the Australian Animal Welfare Strategy, Animal Health Australia has been commissioned to facilitate the development of nationally consistent standards and guidelines, based on the revision of the current Model Codes of Practice for the Welfare of Animals.

The welfare standards and guidelines for livestock aim to streamline livestock welfare legislation in Australia, ensuring that it is both practical for industry and results in improved welfare outcomes. The development of welfare standards and guidelines underpins access to overseas markets and reinforces Australia's international leadership in livestock welfare. Without such change, Australia risks losing consumer confidence and significant national and international markets.²²

AHA is a not-for-profit company whose 33 members (and associate members) currently comprise: the federal and all Territory and State governments; 21 key animal industry bodies; two veterinary organisations; and the Commonwealth Scientific and Industrial Research Organisation ("**CSIRO**").²³ The manner in which the AAWS delegates oversight of the drafting and consultation processes of model animal welfare standards and guidelines to AHA, and the likely motives for doing so, are eloquently explained and critiqued by Dr. Jed Goodfellow of Macquarie University and RSPCA Australia:

Perceptions of procedural fairness in formal decision-making processes shape people's views about the legitimacy of the decision-making body and the decisions it makes (Tyler, 1994; Tyler 2005). If people perceive the process to be unfair, whether due to bias on behalf of the decision-maker, or because they have not had an adequate opportunity to have their say, it can affect their willingness to accept the decision and to engage with future decision-making processes (Tyler, 1994). Having recognised this, governments within liberal democratic societies have promoted the notion of 'participatory democracy' to allow stakeholders and the broader community the opportunity to participate in government decision-making processes (Holmes, 2011). Australia's process for developing farm animal welfare standards incorporates participatory mechanisms including the provision of deliberative forums for key stakeholders, and opportunities for public comment on proposed drafts (see for example, AHA, 2009). Unfortunately, however, the process suffers on procedural

²¹ Notably, this defence to prosecution does not appear to apply to model standards and guidelines such as those relating to farmed animals, including the 'Land Transport Standard', which is prescribed (but not further defined) under the *Livestock Regulations* (NT).

²² Agriculture Victoria website, viewed 1/3/2018 at: <http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/animal-welfare-legislation/livestock-management-legislation-and-regulations/pig-welfare-standards-and-guidelines>

²³ AHA website, viewed 1/3/2018 at: <https://www.animalhealthaustralia.com.au/who-we-are/information-for-members/members/>

fairness grounds due to perceived bias on the part of key decision-making institutions at various stages of the process, and the disproportionate representation of industry interests.

To achieve national consistency, Australia's standards development process is coordinated at a national level with cooperation from all jurisdictional governments. Management of the process is vested in Animal Health Australia (AHA), 'a not-for-profit public company established by the Australian, State, and Territory governments and major national livestock industry organisations' (2014a). AHA's membership includes the Australian Chicken Meat Federation, Australian Dairy Farmers, Australian Egg Corporation, Australian Pork Limited, the Cattle Council of Australia, and other peak industry bodies (AHA, 2014b). It exists to promote 'a robust national animal health system that maximises competitive advantage and preferred market access for Australia's livestock industries' (AHA, 2014a).

In 2009, AHA created a national business plan for the standards development process (Business Plan), which addresses funding, priority setting, membership of writing and reference groups, and outlines the various stages of the process. Upon review of the Business Plan it is clear to see that control over the process is largely vested within three institutions – AHA, the national Animal Welfare Committee (consisting of representatives of the Departments of Agriculture), and the relevant livestock industries. These institutions set the priorities for what standards are to be developed, provide the funding for the process, determine whether there is need for scientific research, and commission such research if it is deemed to be required (AHA, 2009). Once the priorities have been set, AHA is responsible for establishing a standards writing group, which is made up of representatives from the three institutions mentioned above, 'relevant independent science representation, invited consultants' and an 'independent chair' (AHA, 2009). Leading animal welfare groups, RSPCA Australia and Animals Australia, have decided not to participate in the writing groups as they have both formed the view that their involvement will have no substantive impact on the drafting process. These groups do, however, participate within the stakeholder reference group, which is responsible for reviewing and providing comment on draft standards before they go out to public consultation. Once the standards have been finalised following the public consultation phase, they are submitted to a meeting of jurisdictional agriculture ministers to be formally endorsed for implementation in each State and Territory.

The process for developing farm animal welfare standards is dominated by industry interests, if not represented through the industries themselves, then through the agency of AHA, the Departments of Agriculture, and the agriculture ministers. The control exerted by these institutions creates the appearance of a system that is heavily weighted in favour of industry interests, in which alternative viewpoints may not receive a fair hearing. Animal welfare representatives have the opportunity to provide their input to the process but the potential to actually influence substantive changes within such a forum is limited. As the Executive Director of Animals Australia, Glenys Oogjes (2011) has observed:

Whilst consensus is sought in the meetings of such reference groups, the reality of the dynamics of the process is that the livestock industries have an (unofficial) power of veto in decision making – if they determine that they cannot or will not accept a particular Standard, invariably the proposed Standard is varied (watered down) or becomes merely a Guideline.

The perception of bias within the process is also shared by the RSPCA. It has consistently raised concerns over AHA's role in the development process on the basis that, given its membership, 'it cannot be considered an independent body in [the standards development] process' (RSPCA, 2011). The result is a process that lacks procedural legitimacy and

*ultimately produces animal welfare standards that reflect the industry status quo, and deepen the disconnect from public expectations.*²⁴

LFA adopts the above analysis and criticism of the existing process which has led to the range of cruelty permitted by animal welfare standards and guidelines and remnant Codes of Practice. We submit that the current process lacks procedural fairness and fails to reflect best practice regulation, by allowing animal industry to dominate and effectively dictate animal welfare regulations. LFA recommends that the consultation process be undertaken by an independent Office of Animal Welfare (at federal or territory/state level), rather than the AHA, and that animal welfare groups be given primary footing in future drafting and consultation of animal welfare regulations. Animal industry's input would certainly be desired, to test the viability of any proposed animal welfare reforms, but its role would be to provide practical advice on proposed reforms, rather than to prevent such reforms being considered, researched and perhaps trialled.

With regard to the current usefulness of animal welfare science, we refer to Jed Goodfellow's analysis of animal industry's current influence in this field:

An issue related to the standard-setting process is the development of the science upon which such standards are supposed to be based. The Australian Animal Welfare Strategy and the Business Plan emphasise the need for animal welfare policy to be underpinned by scientific knowledge. In 2009/10, Australia invested approximately \$14.279 million in primary industries related animal welfare research, development, and extension (RD&E) (Animal Welfare RD&E Strategy, 2010)...

The largest proportion of funding is managed by livestock industry Research and Development Corporations (RDCs). The role of industry RDCs is to 'invest in R&D and innovation to improve the productivity and delivery of high quality products in order to underpin the competitiveness and profitability of Australia's agricultural, fish and forestry industries' (Commonwealth Department of Agriculture, 2012). The Commonwealth Department of Agriculture is responsible for administering the legislation that governs RDCs. The RD&E expenditure of the RDCs is funded through industry levies that are matched dollar for dollar by the Commonwealth Government (Commonwealth Government, 2011). Prominent livestock RDCs include Meat and Livestock Australia, LiveCorp, Dairy Australia, Australian Wool Innovation, Australian Egg Corporation, and Australian Pork Limited. In addition to RD&E activities, many of these organisations are responsible for industry marketing and representation functions.

The Director of the Centre for Animal Welfare and Ethics at the University of Queensland, Professor Clive Phillips (2011) has... raised the concern that, due to funding pressures, 'some [researchers] may be tempted to undertake work that has the objective of confirming that the status quo does not damage animal welfare, so that the industry does not have to modify its practices to meet community expectations of high welfare standards.' This concern has been partly supported by subsequent empirical research conducted by van der Schot and Phillips (2012) into incidences of 'publication bias' within animal welfare scientific literature. The research found that authors' assessment of animal welfare tended

²⁴ Jed Goodfellow 'Regulatory capture and the welfare of farm animals in Australia' in Animal law and welfare: international perspectives, editors Deborah Cao & Steven White, Switzerland, Springer, 2016, pp. 195-235 (Ius Gentium-Comparative Perspectives on Law and Justice) at Part 6.1: 'Over representation of Industry Interests in Standards Development'

to support the interests of the funding agency. The data showed that the effects of new treatments in improving animal welfare were rated lower if the research was funded by industry, as compared to government, or charitable organisations. van der Schot and Phillips warn that this 'may retard progress in animal welfare development in the animal production industries in particular', and that in light of the 'changes in research funding towards more industry sponsorship, this has the potential to undermine the benefits arising from research in animal welfare.'

The priorities of industry RDCs are self-evident. They exist to promote the productivity and profitability of their respective industries. Any animal welfare RD&E commissioned by these organisations is invariably for that purpose...

Industry RDCs are of course entitled to engage in research to pursue these objectives. The problem lies in the dedication of public funds for such purposes. As a matter of good governance, public funds that are reserved for researching an issue in the public interest should not be delegated to organisations that possess priorities which may conflict with that interest. Unfortunately, the government department responsible for administering the funding arrangements – the Commonwealth Department of Agriculture – is unlikely to perceive this to be an issue as it shares the same instrumental approach to animal welfare as that of the industry RDCs. Consequently, much of the public funding dedicated to animal welfare science is directed towards research that provides little in the way of substantive improvements to welfare standards.²⁵

Once again, LFA adopts Jed Goodfellow's assessment of the current causes of bias in the field of animal welfare science. LFA recommends that, in future, public funds only to be expended on research conducted independently of animal industry, to avoid bias and to advance welfare. LFA notes the relatively slow rate of scientific breakthroughs in relation to farmed animal welfare. With regard to the Northern Territory specifically, LFA is particularly concerned by limited progress, to date, in finalising trials of non-surgical fertility control for cattle, likely in the form of an injectable hormone implant and/or immuno-contraceptive vaccine, similar to those used successfully in several other species, including wild horses, deer and kangaroos. One joint Australian-United States research project, part-funded by Meat and Livestock Australia, utilised an apparently stultifying method by which insufficient dosage appears to have rendered the trial unsuccessful, with recommendations that higher dosages merely be investigated in future.²⁶ Meanwhile, the practice of spaying and castrating tens of thousands - if not hundreds of thousands - of cattle without anaesthetic or analgesic (due to industry objection), continues unabated in the Northern Territory (and other areas of Australia's rangelands).

c) Towards a 'world's best practice' baseline for animal welfare

Being a signatory to the Convention on, and therefore a member state of, the Organisation for Economic Co-operation and Development ("OECD"), Australia has committed to adopting the

²⁵ Ibid, at 6.2 Industry Influence over Development of Animal Welfare Science

²⁶ Michael D'Occhio, 'Final Report: GonaCon trial in heifers' 13 May 2013, Meat & Livestock Australia, viewed 19 March 2018 here: <https://www.mla.com.au/Research-and-development/Search-RD-reports/RD-report-details/Animal-Welfare/GonaCon-trial-in-heifers/183>

OECD's '2012 Recommendation on Regulatory Policy and Governance'.²⁷ This document recommends "...providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis." LFA commends the stated commitment of the Australian Government (through the Office of Best Practice within the Department of Prime Minister and Cabinet), "... to improving regulatory quality through best practice regulation... [including] timely use of evidence to inform decision making as required through the Australian Government's regulatory impact analysis system."²⁸ However, LFA questions how such a commitment aligns with the current process for drafting and approving model standards and guidelines (formerly 'Codes of Practice') for the welfare of certain classes of animal, as discussed below. LFA is concerned that the inquiry currently being undertaken by the Committee lacks both the capacity and intent to consider and adopt 'best practice' contributions from animal welfare stake-holders and the public, as a result of the underlying process at both federal and Territory levels, which is delegated to animal industry.

LFA recommends that all animal welfare regulations in Australia be reviewed with the aim of bringing them up to (or above) the level of world's best practice in all aspects, as soon as can be achieved. Naturally, this will require evidence-based economic analysis to determine the genuine (not ambit) time-frames required by industry to undertake any significant, structural reforms, and to ascertain how the cost of such reforms may best be shared between industry and consumers. In addition, new international markets may also need to be sourced for higher cost and quality, more ethical produce. Without the motivation to adopt world's best practice in animal welfare, Australia is falling behind nations of comparable wealth and stability, undermining our future productivity as well as social and environmental development. Australia's international reputation for high quality produce with more ethical credentials than our competitors is fast diminishing. This has occurred within a relatively short period, perhaps as recently as the last 20 years. The longer we fail to engage and adopt world's best practice, the greater the cost will be of doing so in the future.

LFA submits that owing to animal industry's primary motivation of profit and natural inertia to change, it is unlikely to consider significant animal welfare reforms, especially to existing laws and policies, to be in its interest. If animal industry is willing to concede any substantial animal welfare improvements, it will do so on a voluntary basis, trying to avoid any legal compulsion or enforcement of its commitments. The 2013 submission of the Northern Territory Cattlemen's Association ("**NTCA**") concerning the draft Cattle Welfare Standards and Guidelines generated by the AAWS is a case in point. After highlighting the financial strength of the cattle industry in the Northern Territory, the NTCA submission goes on to state:

²⁷ Department of Prime Minister and Cabinet website, viewed 1/03/2018 at: <https://www.pmc.gov.au/regulation/best-practice-regulation>

²⁸ Department of Prime Minister and Cabinet website, viewed 2 March 2018 at: <https://www.pmc.gov.au/regulation/best-practice-regulation>

By way of a consultative process at Branch and Executive level the NTCA developed the following statement of position with regard to pain relief:

“For pain relief to be included in animal welfare standards then the pain relief and the process must provide positive welfare outcomes, be accessible, practical and cost effective”.

This position places pain relief in the context of the process and the economic, geographic and production system context rather than a simple focus on the drug or operation in isolation

The NTCA strongly suggests that the elements of the standards which require pain relief be removed until such time that they can be demonstrated to meet the NTCA statement above. Inclusion of pain relief at this time will be legislating to fail. [NTCA's emphasis]²⁹

It is important to note that the pain relief proposed by the draft Cattle Welfare Standards and Guidelines was only required in relation to limited forms of de-horning, castration and surgical (flank) spaying procedures, where no anaesthesia is used.³⁰ The draft standards, which remain on indefinite hold, do not suggest anaesthesia or pain relief be provided for the Willis dropped ovary method for rendering heifers infertile. This is the most common method of spaying female cows when fenced segregation from bulls is not viable, as is the case throughout much of the Northern Territory. It is described by veterinarian John Hosie as:

passing a stainless steel instrument through the vagina and puncturing through into the abdomen of the animal and rectally with the other hand manipulating the ovary and cutting off each ovary.

LFA submits that were the graphic truth of such procedures and the suffering they inflict on tens of thousands of female cows each year when lawfully conducted without anaesthesia or pain relief, made known, public outrage would follow, perhaps internationally as well as nationally. In this context, LFA considers it highly unlikely that the responsible federal Minister for Agriculture will prioritise animal welfare ahead of short-term profitability for animal industry. Due to the conflicts of interest within this Ministerial portfolio and consequently facing AAWS public servants, LFA holds little hope that fairness and transparency will be restored to the regulatory process for farmed animal welfare until the truth is widely known.

LFA notes that animal industry does sometimes (strategically) agree to voluntary welfare improvements, while objecting to their implementation in law, apparently in order to postpone increased input costs and avoid loss of market share. One such example relates to the mulesing of sheep.³¹ In 2004, under pressure from international wool markets and from legal proceedings by People for

²⁹ Northern Territory Cattlemen's Association, 'Submission: Draft Cattle Welfare Standards and Guidelines' 2013, viewed 19 March 2018 at:

<http://www.animalwelfarestandards.net.au/files/2011/02/NTCASubmissionCattleStandardsFinal.pdf>

³⁰ See draft standards 6.2 - 6.9, viewed here 19 March 2018:

http://www.animalwelfarestandards.net.au/files/2011/02/Cattle-standards-and-guidelines_public-consultation-version-5-3-13.pdf

³¹ Another example relates to the voluntary phase-out of sow stalls and gestation crates by members of Australian Pork Ltd, not long after they vociferously objected to a mandatory phase-out during the 2007 national review of the relevant Code of Practice.

the Ethical Treatment of Animals (PETA), the Australian wool industry set itself a voluntary deadline of 2010 to phase-out mulesing.³² However, as at 30 June 2016, only 9.2 per cent of all wool produced in Australia came from unmulesed sheep³³ With the exception of a NSW Farmer's Federation call for a ban in 2008³⁴, the wool industry has continued to support only voluntary welfare improvements, such as use of pain relief and analgesia.³⁵

Part 2: Specific issues

(a) Initiatives within the Bill that LFA commends

As mentioned above, subject to a system of independent (apolitical) appointment and secure tenure which will enable a truly capable individual to be appointed to the role of animal welfare CEO under the Bill, LFA is cautiously optimistic that the proposed powers of the CEO may be discharged to good effect, depending also on the resources allocated to the regulator of animal cruelty. However, were this role to be filled by an animal industry representative, the potential effectiveness of the reform would be severely undermined.

LFA notes that in October 2013, it was apprised of a most disappointing attitude reportedly adopted by both Mr. Ken Davidson and Mr. Malcolm Anderson of the Northern Territory's Animal Welfare office, in relation to a complaint concerning the yarding of Bos Indicus cattle, preliminary to live export, at the Cedar Park and Noonamah cattle yards, near Darwin. The complainant had noted that these cattle were held for several days in full sun - without shade - in radiant heat between 53 and 57 degrees Celsius. Documented proof of these facts was offered. The complainant sought assurance that shelter from extremes of heat (namely, the provision of shade) required under both clause 2.2.7 of the Model Code of Practice for the Welfare of Animals - Cattle (2nd edition) and S3.5 of the Australian Standard for the Export of Livestock 2011 (version 2.3) would be pursued for such cattle by the relevant regulator. Instead, it appears the complainant was informed that Bos Indicus cattle "... don't need shade..." and the complaint was summarily dismissed. These events suggest an insensitivity to animal suffering that the LFA hopes any new CEO will be able to correct in the public regulator of animal welfare in the Northern Territory.

³² Animals Australia website, viewed 1/3/18 at: <http://www.animalsaustralia.org/issues/mulesing.php>

³³ New Merino website, viewed 1/3/18 at: <https://newmerino.com.au/mulesing-statistics/>

³⁴ Michael Condon & Bruce Reynolds, 'NSW farmers suggest immediate mulesing ban' 7 March 2008, ABC Rural website, viewed 1/3/2018 at: <http://www.abc.net.au/site-archive/rural/news/content/200803/s2183350.htm>

³⁵ Danielle Grindlay, 'Global wool industry reviews mulesing standards, considers mandatory pain relief', 14 April 2016, ABC Rural website, viewed 1/3/2018 at: <http://www.abc.net.au/news/rural/2016-04-13/global-wool-industry-reviews-mulesing-standards-pain-relief/7323830>

LFA commends the proposed increase in the maximum term of imprisonment for cruelty offences from two to five years and the maximum fine from 200 penalty units - currently equivalent to \$30,800 - to 500 penalty units (currently: \$77,000). LFA notes that such increases will only come to reflect public opinion on the seriousness of animal cruelty offences if the judiciary are willing to impose such terms of imprisonment. This remains a problem in other jurisdictions where maximum sentences have increased but penalties imposed have not. LFA recommends that a program of judicial and prosecutorial education be undertaken in relation to animal cruelty sentencing, much like that which was implemented in the 1980's in relation to gender equality initiatives by the Government of Prime Minister Paul Keating, following Justice Bollen's infamous comments concerning "rougher than usual handling" of women by their male spouses.³⁶

LFA also commends the Bill's proposal to allow animal welfare directions and improvement notices to be issued to persons who provide inadequate care to animals - in less serious situations - with penalties imposed for those who do not comply. LFA notes that such penalties should include immediate seizure (or rescue) of animals improperly cared for, and that all financial penalties ought be paid directly to the regulator, to provide financial incentive and an additional source of funds for their work.

LFA commends the Bills reinstatement of laws requiring drivers to appropriately restrain dogs riding on the tray or back of motor vehicles while travelling on public roads, noting that leashes alone may not be adequate in many circumstances, and that shelter from extreme of heat and cold, including bedding, should also be required.

Finally, LFA commends measures Under controlled circumstances, an authorised officer will now have the power to destroy an animal humanely if the animal is so severely injured, diseased or in such poor physical condition that it is inhumane to keep it alive.

(c) LFA's proposed amendments to the Bill

In summary, LFA makes the following key proposals and recommendations to improve the Bill and the process by which animal welfare laws, more generally, are prepared for application within the Northern Territory:

³⁶ For example, see: Michael Roddan, 'Legal landmarks that have shaped the way the courts deal with domestic violence' viewed 19 March 2018 at: <https://www.thecitizen.org.au/articles/legal-landmarks-have-shaped-way-courts-deal-domestic-violence>

1. That a 'world's best practice' baseline be applied to the review of all animal welfare regulations in the Northern Territory, with the aim of bringing these regulations up to (or above) the level of world's best practice in all aspects, as soon as may reasonably be achieved (as discussed above). This will likely involve following Tasmania's lead in adopting regulations more stringent than those provided by federal model standards and guidelines.
2. That in order to ensure animal cruelty laws are not applied on a speciesist or economically-determined basis, the proposed legal defence to an allegation of animal cruelty in relation to animals covered by codes of practice (and model standards and guidelines) under Section 21 of the Bill, be removed to allow domestic, farmed and wild animals equal protection under the law. A strong judiciary may be entrusted to determine what practices constitute cruelty in particular circumstances guided by the definitions set out in the Bill.
3. That the Northern Territory government take steps to ensure that all public funds expended on animal welfare research within the Territory be expended on research that is conducted independently of animal industry, to avoid bias and to advance welfare (as discussed above). In particular, LFA recommends prioritisation of trial research in relation to non-surgical spaying of female cows; and (in the interim) into correct dosage of pain relief and/or anaesthesia to be administered during all spaying, castrating, de-horning, mulesing and similarly painful procedures.
4. That the Animal Welfare Advisory Committee be reconstituted to give animal welfare representatives primary footing in all consultations and drafting of future regulations, rather than allow the Committee to be dominated by animal industry representatives with a financial interest that regularly conflicts with animal welfare.
5. LFA recommends the phase-out of all greyhound-racing in the Northern Territory, given ample evidence that the industry, due to its profit motive, is inherently unable to provide for the life-time welfare of its dogs, as demonstrated by countless public inquiries in Australia in recent years. LFA submits that greyhound-racing no longer meets the standards of welfare expected by the Northern Territory public in relation to the welfare of dogs.
6. Based on anecdotal evidence that past cruelty and neglect (including animal hoarding) is a strong indicator of future behaviour, LFA recommends that the proposed automatic five-year ban on a person being in control of an animal where that person has been convicted of three animal cruelty offences within a five-year period, be extended to a lifetime ban, subject to the same discretionary review. Prevention of future harm to animals should be prioritised in circumstances where a person has proven incapable of

caring for animals, and regulators should not be required to expend precious resources on recidivist cruelty.

7. Hunting wild animals with dogs (other than birds) inevitably involves setting dogs to attack the animals, resulting in unnecessary and foreseeable harm to both animals, and should therefore be prohibited. Such a ban may incidentally result in less selective breeding of aggressive traits in dogs, and less harm to humans and children from dog attacks.
8. Compulsory microchipping of dogs and greater enforcement of dog registration and de-sexing laws in outlying communities in the Northern Territory will likely begin to help deal with the extraordinarily poor welfare of many dogs in remote communities. Currently younger and weaker animals are regularly killed and eaten by older and stronger animals, who would otherwise lack adequate food to survive.³⁷ Guidance should be sought from local Aboriginal elders and persons involved in current efforts to tackle this glaring failure in Northern Territory animal welfare. Low or no-cost de-sexing of dogs should be given priority funding, to improve the welfare of animals, preferably before this issue becomes a cause of greater international embarrassment (partly through extended tourism opportunities leading to increased employment) for the Territory, and Australia, more broadly.
9. Finally, with moves afoot in Victoria to recognise animal sentience in new animal welfare legislation³⁸, LFA recommends that the Northern Territory take the opportunity presented by the Bill, to follow suit.

Conclusion

Farmed animal production - including intensive production - is most likely the greatest cause of animal suffering in Australia, by virtue of the fact that it directly harms the highest number of sentient animals over the longest period. The Northern Territory has little intensive animal production because the cost of imported grain for animal feed has become financially non-viable, with little or no local grain production due to farmers favouring higher value crops (such as

³⁷ See: ABC Radio report on dogs of Yuendumu, podcast here:
<http://www.abc.net.au/radionational/programs/awaye/dogs-have-dreaming:-pet-ownership-in-yuendumu/8997220>

³⁸ See: Victoria's Animal Welfare Action Plan, viewed here 19 March 2018:
http://agriculture.vic.gov.au/_data/assets/pdf_file/0005/377123/Animal-Welfare-Action-Plan-Dec-2017.pdf?utm_medium=email&utm_campaign=Victorias%20first%20Animal%20Welfare%20Action%20Plan&utm_content=Victorias%20first%20Animal%20Welfare%20Action%20Plan+CID_31a051be2daf73c9633e26658f2fcc9a&utm_source=email&utm_term=Animal%20Welfare%20Action%20Plan%20-%20Improving%20the%20Welfare%20of%20Animals

melons), It is simply cheaper to import eggs, chicken and pig meat from interstate than it is to farm it in the Territory.³⁹ However, unfortunately, the Northern Territory remains one of, if not the, least progressive jurisdiction in Australia when it comes to ensuring animal welfare for cattle, as well as for dogs in remote communities. This is largely due to its rangeland cattle industry and current routine methods of hand spaying; castration; de-horning; horn-trimming; and branding, all without anaesthetic or analgesic, which would likely be a source of public outrage and international embarrassment, if known by the public. LFA recommends that the Bill be taken as an opportunity to elevate Northern Territory animal welfare to Australian, if not world, best practice.

Thank you for reading this submission. Should the Committee have any queries concerning its content, please contact Lawyers for Animals via email: enquiries@lawyersforanimals.org.au

Yours faithfully,

Nichola Donovan

President

Per: LAWYERS FOR ANIMALS INC.

www.lawyersforanimals.org.au

³⁹ For instance, egg production in the NT ceased around 2007 - see: Melanie Tait, 'The Northern Territory's egg industry is scrambled' 9 January 2008, ABC Rural Northern Territory website, viewed 18 March 2018 here: <http://www.abc.net.au/site-archive/rural/nt/content/200801/s2135023.htm>