SUBMISSION TO PRODUCTIVITY COMMISION ON *REGULATION OF AGRICULTURE DRAFT REPORT*

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Voiceless, the animal protection institute (**Voiceless**) is a not for profit think tank, focused on raising awareness and alleviating the suffering of animals in factory farming and the commercial kangaroo industry. We are grateful for the opportunity to comment on the Productivity Commission's Draft Report on the Regulation of Agriculture (**Draft Report**) and commend the Productivity Commission (**Commission**) on its detailed and thorough investigation.

Outlined below are our responses to those Draft Recommendations and Information Requests in the Draft Report that are relevant to Voiceless' expertise in animal agriculture.

1. LAND USE REGULATION

INFORMATION REQUEST 2.1: What are the advantages and disadvantages of 'right-to-farm' legislation? Are there any other measures that could improve the resolution of conflicts between agricultural and residential land uses?

1.1. Voiceless opposes the implementation of 'right to farm' laws or other regulations that seek to bypass community consultation, participation and objection in the planning system, and more generally elevate the status of farming above other lawful land uses. Depending on the scope of 'right to farm' laws, they can alienate the very communities the farms operate within that may have well-founded concerns around the environmental, social (including human health), amenity and animal welfare impacts of animal agriculture developments, and grant immunity to farmers from claims of nuisance.

1.2. Voiceless is of the opinion that the planning system is best placed to both set the parameters for sustainable farming development, and resolve issues that may arise due to conflict of land use or poor amenity. The planning system aims to ensure that land use and development is appropriate, coordinated and sustainable. This is generally achieved through long term strategic planning, with local and regional contexts catered for in more detailed local and regional planning policies. The agricultural industry, like all other industries and the public, can participate in this strategic planning process with their local, state and territory authorities. On the other hand, a blanket "right to farm" law overrides this broad strategic approach in favour of one industry, without proper assessment processes or adequate justification on an economic, environmental or social basis.

1.3. Long term, a "right to farm" is not supported for the following reasons:

1.3.1. It elevates one industry above other forms of land use. This has the potential to actually cause more negativity and disquiet in the community. Related to this is that a "right to farm" law will not make conflict of land use or nuisance issues go away. Rather, it will prohibit the investigation of the real causes of this conflict, and prevent reaching a solution acceptable to all parties.

1.3.2. It significantly limits the property rights of one party as against another. In addition to reduced amenity, the affected party may suffer a loss in property value whilst the producer can continue to profit from their activities without regard to the nuisance caused.

1.3.3. Amenity and environmental standards are there for a reason – to protect the health of the community and environment. If development is operating in such a way as to exceed this criteria and cause verifiable negative impacts to the surrounding community, then improvement programs or restrictions on use should be imposed, like would happen with any other development. Responsible producers should have no trouble meeting these requirements and Voiceless has seen no convincing justification to argue otherwise.

1.3.4. It has the potential to discourage best practice and continuous improvement in the agricultural industry. If producers are immune from meeting certain environmental standards and their actions cannot be challenged in Court, the default will be the least-cost option with little incentive to improve and potentially negative consequences to animal welfare.

1.4. Suggested measures that could improve resolution of conflicts include:

1.4.1. As part of strategic planning, ensure appropriate buffer zones are in place to prevent encroachment into agricultural land use areas. Standards can be set at the state and territory level and implemented uniformly in each local government area.

1.4.2. Require and ensure comprehensive community consultation takes place for any new proposed agricultural development. This ensures issues are discussed upfront and concerns factored into development design.

1.4.3. As is done for flood liable and bushfire prone land, include as a note on planning certificates and disclosures for land conveyances, that neighboring or nearby land is zoned for agricultural use, as a warning to incoming purchasers.

1.4.4. Establish an independent conciliation and mediation commission for farming-related disputes. This would encourage resolution of disputes at low cost and without resorting to formal Court processes.

1.5. As to point 1.4.2, it is imperative that interested and potentially affected third parties are consulted and their views given full consideration throughout the development application process. Reducing the rights of third parties to voice concern or object to development applications would erode public confidence in the planning system. These third party rights can also safeguard the proper application of planning laws, and allow for the thorough consideration of development impacts. This is particularly important where local authorities lack the funds, resources, expertise or willingness to thoroughly assess planning proposals that present concern.

1.6. Community opposition to animal agriculture developments is growing, particularly with respect to the development of large-scale and intensive production systems. It is no doubt due to this opposition that industry participants are so eager to reform planning laws to restrict the public from participating in planning processes. For example, Harden Shire Council (NSW) recently received a record number of complaints in response to a development application for an intensive piggery. Complaints were submitted by Harden residents (including local producers) and the general public, with concerns relating to animal cruelty, the environment and social issues.[i] Many of these submissions provided in-depth analysis of potential impacts of the development to the land and local community, including issues relevant to soil and groundwater contamination, odour, traffic, noise, Aboriginal Heritage and leaching into vulnerable water systems. The submissions and public consultation processes appear to have been useful in formulating the Council's own assessment of the development, and in compelling Council to request further documentation and particulars in support of the application. Critically, the Council was inundated with community responses – a level of concern that should not be discounted by authorities or readily sidelined by right to farm legislation.

1.7. We also recommend that animal welfare be properly taken into account in planning processes. In our view, the current consideration of animal welfare concerns in planning processes is tokenistic, despite being a clear concern for local communities and the broader Australian public. In NSW, for example, the State Environmental Planning Policy for Intensive Agriculture requires an authority to

'consider' whether a development application has 'indicated an intention' to comply with relevant animal welfare industry standards.[ii] In addition, one of the stated objectives of this particular Planning Policy is for the consent authority to take into account measures for the health and welfare of animals.[iii] Given growing public concern for animal welfare, and changing community expectations around the suitable treatment of animals used for agriculture, Voiceless considers that state and territory planning laws should be amended to make clear that:

1.7.1. A development application "must comply" with relevant animal welfare industry standards and provide details to the planning authority as to how these standards will be implemented and met during operation.

1.7.2. If a development is approved, as a condition of consent require annual performance reporting and/or independent audits against the animal welfare standards.

1.7.3. Community opposition to new animal agricultural developments on animal welfare grounds must be taken into consideration by the planning authority when determining the application.

2. REGULATION OF FARM ANIMAL WELFARE

2.1. Voiceless strongly supports Draft Recommendation 5.1 and elements of Draft Recommendation 5.2.

2.2. As consistency with community expectations is a key focus in the Draft Report, it is particularly significant that a 2016 national survey found more than half of Australians would be more likely to vote for a candidate who supported the establishment of an Independent Body to improve standards of animal welfare at a national level.[iv]

Comment on failings of current animal welfare framework

2.3. Over the years it has become apparent that a significant portion of the Australian public has lost confidence in the animal protection framework. This is evidenced by large public demonstrations and political opposition to live export;[v] increased participation in the animal protection movement;[vi] increased non-violent direct action activist behaviour;[vii] and ongoing reliance on animal welfare charities to conduct investigations into regulatory non-compliance in the live export trade[viii] and animal use industries more generally.

2.4. In our view, the principle issues giving rise to this sentiment include, but are not limited to: (i) a failure of Australian laws to adequately protect animals; (ii) animal welfare standards that are largely inconsistent with community expectations and international best practice; (iii) inadequate monitoring and enforcement of compliance with animal welfare standards by federal, state and territory authorities; and, (iv) a lack of transparency around the way in which animals are treated and kept within animal use industries.

2.5. In our view, these issues are perpetuated by failings in the animal protection regulatory and governance frameworks, many of which are canvassed in the Draft Report.[1]

2.5.1. Australia presently lacks any valid form of federal governance or leadership in the animal protection space. Since 2013, existing governance structures that provided for federal government leadership in animal welfare, and facilitated broad stakeholder input into the

[1] Voiceless thoroughly detailed these concerns in its submission on the *Voice for Animals (Independent Office of Animal Welfare) Bill 2015*, dated 14 August 2015 and available here: https://www.voiceless.org.au/sites/default/files/Voiceless%20Submission%20on%20the%20Voice%20for%20Animals%20Bill%202015.pdf.

development of animal welfare standards and policies, were defunded or dissolved by the Commonwealth Government.[2] At the same time, animal use industries have received significant and disproportionate levels of financial and non-financial support from the Australian Government to boost productivity and profitability, often at the expense of animal welfare.[ix]

2.5.2. Both at a federal and state level, the regulation and governance of animal protection has been delegated to government departments that possess a real or perceived conflict of interest (as identified in the Draft Report).[x] The Australian public has lost faith in these departments to legitimately act in the best interests of animals.[3] This conflict may also explain what we consider to be a reluctance on the part of authorities to adequately monitor and enforce compliance with animal protection laws.

2.5.3. Industry representatives have disproportionate influence over the animal welfare standard-setting process, resulting in welfare standards being established that fail to adequately protect animals and function to reinforce existing industry husbandry practices.

2.5.4. Animal welfare science and research in Australia is largely coordinated, commissioned and/or funded by representatives of animal use industries, resulting in a lack of independent Australian animal welfare science, and a reliance on industry-backed science in the standard-setting process.

2.5.5. The result is that animal welfare standards are effectively prepared by industry, for industry, and with the assistance of industry funded and/or commissioned science.[xi]

Example of industry predominance in standard-setting processes

2.6. We wish to raise concern with the current development of the Draft Standards & Guidelines for Domestic Poultry. Voiceless' request to be involved in the development of these Draft Standards & Guidelines was rejected by the Animal Welfare Task Group without reason. We understand this was the case with other animal protection groups that also have experience in the welfare of poultry. Of the 35 stakeholders involved in the initial draft consultation process, we are aware of only two representatives from animal welfare or protection organisations. Our concern is that the predominance of industry and pro-industry influences in the initial drafting and deliberation process will make it less likely to result in a set of draft Standards & Guidelines that adequately improve the standards that currently exist under the *Model Code of Practice for the Welfare of Animals:*

[2] Despite the critical importance of federal governance and leadership in animal protection, in 2013 the Australian Government completely withdrew federal support and funding from key animal protection initiatives. These included: (a) redirecting responsibility for the Australian Animal Welfare Strategy to individual states and territories, as well as withdrawing $5 million of federal funding from the strategy in the 2014 budget; (b) disbanding the Australian Animal Welfare Strategy Advisory Committee, which was previously responsible for overseeing the development of the Australian Animal Welfare Strategy and reviewing animal welfare Standards & Guidelines in livestock production; (c) disbanding the animal welfare subdivision within the Department of Agriculture, which was previously responsible for implementing the Australian Animal Welfare Strategy; (d) scrapping plans to establish an independent Inspector-General of Animal Welfare and Live Export, which was proposed by the Australian Labor Party prior to the 2013 Federal Election; and (e) discontinuing the Live Animal Exports – Improved Animal Welfare Program, which offered funding to countries that import live animals from Australia to improve their animal welfare outcomes.

[3] Government reluctance to prohibit the use of battery cages and sow stalls, and an ongoing commitment to expanding Australia's live animal exports trade, clearly reflects the prioritisation of profitability over animal welfare, even where such a prioritisation is entirely at odds with community expectations.

Domestic Poultry (4th edition) in line with independent, peer-reviewed scientific research, international standards and community expectations.

Example of industry and pro-industry influences in parliamentary processes

2.7. Industry and pro-industry influences are also pervasive in parliamentary processes on animal protection issues, often leading to the exclusion or discounting of dissenting viewpoints. For example, in September 2015, a Senate Committee heard public submissions on the Australian Greens' *Voice for Animals (Independent Office of Animal Welfare) Bill 2015*. The Bill sought to introduce an independent office of animal welfare to address many of the regulatory and governance issues outlined above. The inquiry was conducted by the Rural and Regional Affairs and Transport Legislation Committee. During public hearings, representatives of animal protection groups were repeatedly asked irrelevant questions and the substantive issues raised by the representatives were either ignored or given cursory consideration before being summarily dismissed. In contrast, the Department representatives were given a more respectful reception. According to Elizabeth Ellis, who is an Honorary Senior Fellow in the Faculty of Law, Humanities & the Arts at University of Wollongong:

> *"[T]he Senate inquiry that preceded the report gave a valuable insight into how animal welfare issues are viewed within our political and wider culture.*
>
> *…*
>
> *Senators who have had direct involvement in livestock industries and/or represent states that are closely aligned with rural agricultural interests played a dominant part in the process.*
>
> *This situation forms a microcosm of a wider problem with existing animal welfare regulation: that primary industries and agriculture departments administer and, in some cases, enforce animal welfare laws. They also advise governments on animal welfare, with significant input from industry.*
>
> *While most animal welfare regulation is state-based, the Commonwealth adopts the same model, with the Department of Agriculture and Water Resources bearing responsibility for most national animal welfare matters, including live exports. Yet the department's predominant role is to support and promote agricultural and other industries – the very conflict of interest that the Greens' bill was seeking to avoid.*
>
> *…*
>
> *But again the hearing showed an evident disdain for animal protection bodies, including the RSPCA, on whom state governments rely to enforce animal cruelty legislation.*
>
> *…*
>
> *The creation of an independent office of animal welfare would be a good start in helping to change this culture. This does not preclude industry input, but ensures that other expertise is recognised."*[xii]

Regulatory capture

2.8. The animal welfare regulatory and governance framework as a whole is failing to protect animals. Commentators describe the situation as 'regulatory capture'.[xiii] Regulatory capture exists where the substance or application of the law in question is consistently directed away from the public interest towards the interests of the industry it purports to regulate. In effect, regulatory capture can be detected where regulators serve the interests of the industry being regulated rather than the public interest. Given the disproportionate influence of the animal agriculture industry as outlined above, it is highly likely that regulatory capture exists in the animal welfare regulatory and governance framework.

2.9. In our view, introducing independent animal welfare bodies (**Independent Bodies**), as outlined below, is an important first step in resolving many of the issues outlined above.

INFORMATION REQUEST 5.1: The Commission is seeking feedback on (a) the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare; (b) what the body's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom); (c) what processes the body should use to inform and gauge community values on farm animal welfare; and, (d) how such a body should be funded.

(a) Most effective governance structure

2.10. Voiceless recommends the following as being the most effective governance structure for an independent body tasked with assessing and developing Standards & Guidelines for farm animal welfare:

Proposed model for a federal Independent Body

2.10.1. We recommend the establishment of a federal Independent Office of Animal Welfare (**IOAW**), which would be a statutory authority. In the enabling legislation, parliament would detail the role, responsibilities and powers of the IOAW, its guiding principles, and the processes for appointing the Chief Executive Officer (**CEO**) of the IOAW.

2.10.2. The IOAW would be overseen by, and the CEO would report to, the Attorney-General's Department. Voiceless cautions against establishing the IOAW within the Department of Agriculture and Water Resources (**DAWR**), as this would compound existing conflicts and the underlying failings of the current framework. Indeed, processes would need to be implemented to ensure the IOAW is not unduly influenced by industry, and thereby avoid the issues of conflict and regulatory capture previous discussed.

2.10.3. The Attorney-General would appoint a CEO to the IOAW. The enabling legislation would outline the process and principles guiding the appointment of the CEO. The CEO must be appropriately experienced and qualified, and be entirely devoid of existing conflicts. Again, processes would need to be put in place to ensure conflicts do not arise during the CEO's appointment, and outline processes to deal with conflicts should they arise.

2.10.4. The IOAW would be overseen by the CEO, and would consist of the following:

- An Animal Welfare Advisory Committee, comprised of appropriately qualified and experienced staff and stakeholders from animal welfare NGOs, consumer groups, independent animal welfare scientists, animal welfare ethicists, representatives from state and territory animal welfare bodies, and industry representatives. It would be responsible for advising the CEO and the government on animal welfare matters, areas for policy and law reform, and developing Standards & Guidelines.

- An Independent Animal Welfare Science and Community Ethics Advisory Body, comprised of independent animal welfare scientists and ethicists. The body would provide the CEO and government with independent advice on animal welfare science, and community values research aimed at establishing community views on animal welfare. Research conducted by the body would also inform the Animal Welfare Advisory Committee when developing the Standards & Guidelines, and ensure that this process is not monopolised by research funded and/or commissioned by industry Research and Development Corporations (**RDCs**), as is currently the case.

- An Animal Welfare Enforcement Body, responsible for overseeing the enforcement of Federal animal protection laws and advising the CEO and government on areas for improvement. Ideally, the body would also have delegated powers to assist the Commonwealth with enforcement functions. While the proposed model envisions the IOAW would have the capacity to assist and oversee the Commonwealth in its enforcement efforts, this function can be reviewed at a future date to determine whether the IOAW could assume all Commonwealth animal welfare enforcement responsibilities.[4]

Proposed model for state and territory Independent Bodies

2.10.5. There are potential benefits to the states and territories retaining responsibility for regulating and enforcing animal welfare within their jurisdictions. Consigning responsibility to the Commonwealth could result in a loss of jurisdiction-specific expertise. It is arguable that state and territory authorities better understand, and accordingly, are able to more effectively respond to animal welfare issues within their jurisdictions. As is currently the case, more progressive jurisdictions can continue to introduce higher animal welfare standards to those proposed by national standards (although we acknowledge that the role of the IOAW would be to influence the harmonisation of animal welfare standards across jurisdictions, and ideally, bring those jurisdictions with lower standards into line with those of higher standards). Further, and as pointed out in the Draft Report, there may be practical efficiencies in the states and territories retaining responsibility for monitoring and enforcement.

2.10.6. In saying that, the abovementioned concerns around regulatory capture and conflicts of interest also exist at the state and territory level. Without addressing these regulatory and governance failures, the federal IOAW will be limited in its ability to effectively address the concerns outlined above. For example, following industry pressure, the NSW Government executed a Memorandum of Understanding (**MoU**) undertaking not to implement any mandatory standards from the new national Standards & Guidelines. The MoU subverts the standard-setting process, and is just one of many examples demonstrating a clear government preference to protect industry profits over animal welfare and the public interest in animal protection.

2.10.7. Accordingly, Voiceless recommends the establishment of independent animal welfare statutory bodies in each state and territory.[5] These bodies would replace the current animal welfare advisory bodies (which include both statutory and non-statutory bodies) that currently exist in some states and territories. The federal IOAW would be responsible for facilitating and liaising with state and territory governments on the establishment of these bodies. The federal IOAW would also be responsible for coordinating the involvement of state bodies in developing national animal welfare policies, advising the federal IOAW on state-specific animal welfare issues, and engaging in the Standards & Guidelines development process, among other functions. This would aid in the implementation of national animal welfare Standards & Guidelines in a more consistent and cohesive manner across all jurisdictions, and ensure state-specific animal welfare

[4] At a federal level, DAWR is responsible for regulating and enforcing the live export trade. The failure of DAWR to effectively regulate the trade, to ensure export compliance with relevant standards, and to penalise exporters for non-compliance is well documented and does not need to be canvassed here.

[5] An example of this structure already exists for food regulation in Australia, which has a Commonwealth statutory body (Food Standards Australia) and equivalent state and territory level statutory bodies.

issues are adequately addressed in the development of animal welfare policies and law reform. It is imperative that these state-based bodies remain independent of departments of agriculture (or equivalent) in their respective jurisdictions.

2.10.8. Under this model, state and territory governments would retain animal welfare enforcement functions in their jurisdictions. As with the federal IOAW, however, we recommend that the state-based Independent Bodies oversee these enforcement activities, and be delegated powers to assist statutory authorities (including police and state branches of the RSPCA) in monitoring and enforcing animal protection laws in their respective jurisdictions. Currently, the majority of animal cruelty investigations and prosecutions are conducted by state-based branches of the RSPCA. Unlike any other area of law, animal welfare is often entirely dependent on charitable organisations for enforcement, with the capacity to perform these functions significantly curtailed by limited funding and resources. Accordingly, the Independent Bodies should also oversee the enforcement efforts of statutory authorities, and provide advice to government on areas for improvement. Under this model, the monitoring and enforcement functions of the various departments of agriculture (or equivalent) would be transferred to the Independent Bodies for animal welfare in each jurisdiction. Specific attention and resources would need to be given to enforcing compliance with animal protection laws by animal agriculture industry participants, which under the current system is sorely lacking across all jurisdictions.

2.10.9. As an alternative to implementing state-based animal welfare bodies, an intergovernmental agreement could be enacted between the Commonwealth and the states and territories. Under this arrangement, Standards & Guidelines would be developed at a national level, with the states and territories agreeing to adopt and enforce these standards in their respective jurisdictions. While this may operate to harmonise and lift national animal welfare standards, it would do little to remedy current deficiencies in monitoring and enforcement efforts. Accordingly, if this option were to be pursued, we recommend that the federal IOAW also be given responsibility to oversee state-based monitoring and enforcement efforts and recommend areas for improvement.

Dealing with monitoring, enforcement and transparency issues

2.10.10. As noted above, a key problem is the lack of effective compliance monitoring and enforcement of animal welfare standards at a federal, state and territory level. The implementation of stronger animal welfare standards can only be effective if there is a willingness and capacity to enforce them. Consideration must also be given to improving transparency of the treatment and conditions in which animals are kept in agriculture. The current lack of transparency not only impacts on community confidence and sentiment, but also limits the ability of statutory authorities to appropriately monitor and enforce animal welfare standards.

Draft Recommendation 2 – industry quality assurance schemes

2.11. In relation to Draft Recommendation 5.2, Voiceless disagrees that industry quality assurance schemes are an effective mechanism to achieve compliance with farm animal welfare standards. Assurance schemes are voluntary, unenforceable and reliant on industry-self regulation, which in our view, is counterproductive to achieving higher levels of compliance. As assurance schemes are voluntary, reliance on them to regulate farm animal welfare will further entrench existing inconsistencies in animal welfare standards, and fail to eliminate practices that are inconsistent with community expectations. Further, the only legal recourse to non-compliance with assurance

schemes is through the Australian Consumer Law (**ACL**), which is designed to protect consumers, not animal welfare.

2.12. The failure to effectively regulate free range egg production in Australia provides a clear example of why soft regulatory measures (such as labelling and assurance schemes) cannot be solely relied upon to improve animal welfare standards and meet community expectations. Successive Australian governments have adopted a market-based approach to improving egg-layer hen welfare, rather than legislating for higher welfare standards. This approach favours consumer choice to drive higher welfare standards, as opposed to legislative intervention (such as banning battery cages consistent with international standards and community expectations, or mandating internationally comparable free range standards). While numerous free range assurance schemes currently exist in the Australian market (including Egg Corp Assured, which is an industry-based assurance scheme), the ACCC has brought several successful prosecutions against alleged "free range" egg producers under the ACL for misleading and deceptive conduct. Indeed, the AECL has previously admitted to accrediting producers under its Egg Corp Assured "free range" standard, despite those producers operating their production systems at outdoor stocking densities of between 20,000 and 50,000 hens per hectare.[xiv] By comparison, the *Model Code of Practice for Animal Welfare: Domestic Poultry* (4th edition) recommends an outdoor free range stocking density of 1,500 birds per hectare (or higher for rotation systems), which recent survey data indicates is consistent with consumer expectations.[xv] These successful prosecutions are consistent with survey results from animal and consumer protection groups, showing that the standards proposed by most eggs labelled "free range" fail to meet community expectations.[6]

2.13. It should not be assumed that left unregulated (or regulated through voluntary accreditation schemes), industry will achieve high animal welfare standards. As acknowledged in the Draft Report, high animal welfare and production do not necessarily go hand-in-hand, and animal welfare can and often does conflict with productivity / profitability (the use of battery cages for hens, sow stalls for pigs, and the live export trade are clear examples of the latter). It also cannot be assumed that market forces will improve welfare standards. Market forces are an imperfect means of achieving acceptable welfare standards. Consumers have a number of competing pressures and considerations, which impact on their purchasing decision-making, such as cost and ability to pay. Further, given inadequate disclosure of production methods and systems on packaging, consumers are unable to make informed choices when purchasing animal or animal-derived products.

2.14. There is certainly a place for independent quality assurance schemes to provide greater consumer choice. However, assurance schemes cannot be relied upon in place of an independent animal welfare regulatory and governance framework, and the development and implementation of progressive, science-based animal welfare policies and legal reforms that are consistent with community expectations and international standards.

[6] Voiceless stresses the importance of needing to revise the Information Standard for Free Range Egg Labelling, as it is currently entirely inadequate in terms of fiscal competition and most importantly, animal welfare. Voiceless also agrees with the Commission's conclusion that the Information Standard is unlikely to provide greater certainty for consumers. Significantly, the Information Standard was created without regard to the existing Model Code of Pratice for poultry, and as a result, sets a drastically lower minimum standard for animal welfare. For more information, see Voiceless, 'Submission to the Australian Treasury on behalf of Consumer Affairs Australian and New Zealand on Free Range Egg Labelling' (27 November 2015) available at <https://www.voiceless.org.au/animal-law/past-submissions> 7.

(b) Responsibilities of the Independent Body

2.15. The Federal Independent Body would be responsible for:

2.15.1. Providing balanced advice to the Commonwealth Government on animal protection issues.

2.15.2. Coordinating the development and implementation of animal protection Standards & Guidelines.

2.15.3. Facilitating input from a balanced and diverse range of stakeholders in the standard-setting process, including from animal protection NGOs and independent animal welfare experts.

2.15.4. Commissioning independent, internationally recognised and peer-reviewed animal welfare science and developing reports to inform the development of animal protection policies, laws and the Standards & Guidelines.

2.15.5. Commissioning community values research and developing reports aimed at establishing community views and values for animal welfare.

2.15.6. Commissioning inquiries into animal welfare matters.

2.15.7. Developing research and advisory reports and submitting them to the Attorney-General for tabling in Parliament. The Attorney-General would be required to formally respond to the reports in Parliament, ensuring animal welfare is independently represented in Parliament.

2.15.8. Creating a central database to collate information from these inquiries and reports, in addition to third party information. This could include matters such as compliance monitoring, charges and prosecutions, numbers of animals being produced and used, and provide an information repository of animal welfare research from all Australian jurisdictions and internationally.

2.15.9. Harmonising the various state and territory animal welfare frameworks.

2.15.10. Overseeing enforcement of the animal protection regulatory framework, including critiquing the activities of enforcement authorities and advising the CEO and government on areas of improvement.

2.15.11. Ideally, assisting statutory law enforcement authorities in enforcing federal animal welfare laws, such as the live animal export regulatory framework.[7]

2.15.12. Ideally, coordinating the establishment of similar subsidiary statutory animal welfare bodies in each state and territory.

2.16. The state-based Independent Bodies would have similar responsibilities in advising state and territory governments on animal protection issues, participating in the Standards & Guidelines development and implementation process, and assisting and overseeing the enforcement efforts of statutory law enforcement bodies. As indicated previously, the model proposes that the Independent Bodies would assume all enforcement responsibility from state and territory departments of agriculture (or equivalent).The bodies would be implemented in a coordinated

[7] Following the June 2016 Vietnamese live export exposé, the ALP's model for an Independent Office was notably strengthened to include responsibility for overseeing compliance with the live export regulatory framework and investigating potential breaches.

fashion to avoid overlap in the roles, functions and responsibilities of the federal and state bodies, and to maximise collaboration, cohesion and cost efficiencies.

(c) Processes to inform and gauge community values on farm animal welfare

2.17. Voiceless recommends that the federal Independent Body be responsible for conducting independent community values research aimed at ascertaining community views and values for animal welfare. This would include reviewing existing literature on community views and managing consultation processes (including public attitudes surveys) aimed at rigorously determining community views and values of animals used in agriculture. We agree that surveys should be designed to balance community attitudes to animal welfare with willingness to pay.

2.18. Voiceless recommends a baseline survey be developed by an independent consultant, with the process, collection methodology and principles, and survey questions developed in conjunction with industry and non-industry stakeholder input. The results of the baseline survey would be detailed in a report, which would be made publicly available. The survey would then be repeated at regular intervals (for example, every 2 years) to measure attitudinal changes from the baseline, and to inform areas for policy and legislative reform. The polls should be conducted nation-wide and have a broad and objectively selected sample. Previous independently commissioned polls should be taken into consideration to avoid overlap and minimise cost inefficiencies.

2.19. In addition to surveys, the federal Independent Body should monitor community values and trends from publicly available information, including consumer purchasing data (such as purchasing or consumption of higher welfare or animal-free products), community behaviour patterns (such as membership to animal protection or vegan societies or organisations), the establishment of vegan or vegetarian restaurants or establishments, etc.

2.20. As part of this process, we agree that the federal Independent Body would be responsible for disseminating information to the community on farm animal practices and animal welfare. This would educate the community on the reality of animal agriculture and assist them in developing their own attitudes towards animal welfare. It is imperative, however, that the information is based on independent, peer-reviewed and internationally recognised animal welfare scientific research, as opposed to industry marketing that aims solely to promote agribusiness and increased consumption of animal or animal-derived products.

(d) Funding

2.21. Establishing statutory Independent Bodies at a federal and state level would be a more efficient and effective means of developing and implementing animal welfare policy and regulation than the current model. The proposed model would:

2.21.1. Centralise responsibility for animal welfare under a federated structure, rather than having responsibility combined within inconsistent bureaucratic structures.

2.21.2. Decrease red tape and streamline governance by relieving DAWR and equivalent state-based departments of potential conflicts and political influences.[xvi]

2.21.3. Reduce inefficiencies and maximise outcomes through the oversight functions of the independent office.

2.21.4. Harmonise animal welfare standards across jurisdictions, reducing compliance costs and competition issues for businesses operating across multiple jurisdictions.

2.21.5. Operate within a coordinated framework, enabling the sharing of information and research and avoiding unnecessary overlap in activities, functions and responsibilities.

2.22. In 2013, the Australian Greens estimated that an initial investment of $500,000 would be required to establish a federal Independent Body[xvii] in accordance with the calculations by the Parliamentary Budget Office in its 2013 post-election report.[xviii] This sum was described as 'virtually cost-neutral' by the Hon. Adam Bandt MLC in his first reading speech for the *Voice for Animals (Independent Office of Animal Welfare) Bill 2013* (Cth).[xix] This figure would need to be recalculated to fit the current budgetary context, and establishment costs will differ across the various state and territory jurisdictions. We acknowledge that the model proposed above differs from that proposed by the Australian Greens.

2.23. As federal and state departments of agriculture (or their equivalent) are currently responsible for performing many of the proposed functions of the Independent Bodies outlined above, we recommend that the corresponding portion of the funds that would otherwise be allocated to the departments to perform these functions be redirected to fund the Independent Bodies.

2.24. Commonwealth subsidies are currently provided to industry Research and Development Corporations (**RDCs**) for the purpose of marketing and conducting scientific research, in the form of matched funding from industry levies. In 2014-2015, for example, $3.3 million in Government matching was given to the Rural Industries Research and Development Corporation (**RIRDC**) for marketing and research purposes.[xx] RIRDC is the only Statutory RDC relevant to agriculture animals (other than fish). In addition, each of the industry RDCs receive Commonwealth matching: in the same year, the Commonwealth provided matching funds of $4.9 million to Australian Pork Limited,[xxi] $21 million to Dairy Australia[xxii] and $46.5 million to Meat & Livestock Australia,[xxiii] amongst other animal industry RDCs. As the Independent Body will be specifically charged with conducting animal welfare scientific research into animal use industries, with a core function to inform the public about animal welfare in the food industry, we recommend that the corresponding portion of the subsidies that would otherwise be allocated to the RDCs to perform these functions be redirected to fund the Independent Body.

2.25. A significant portion of the costs of producing animal products are externalised, in that they are not factored into the retail price of the product. These costs include, but are not limited to, governing and regulating the industry. In our view, it is reasonable that a portion of the costs of governing and regulating the animal agriculture industry, including the costs of establishing and operating Independent Bodies proposed above, is borne by industry. This can either be done through the imposition of levies or a corresponding reallocation of government subsidies (as proposed above). While these costs may invariably be passed onto consumers, it would result in the retail price of animal products more accurately reflecting their true production cost.

3. BIOSECURITY

INFORMATION REQUEST 7.1: Participants raised concerns about farm trespass, particularly as trespass can increase biosecurity risks. What strategies could be used to discourage farm trespass? Are existing laws for trespass sufficiently enforced in relation to farm trespass?

3.1. Strong legal protections already exist to protect both operators of animal industries and the general public from potential biosecurity threats presented by unlawful trespass. States and territories already have laws to prohibit trespass,[xxiv] undercover filming,[xxv] and to protect individuals and operators of animal industries from deliberate acts of property damage,[xxvi] threats, harassment or intimidation.[xxvii]

3.2. In Voiceless's view, the introduction of new layers of regulation against trespass will not only contradict the Draft Report's intention to reduce red tape, but will also fail to further deter trespassers.

3.3. On this topic, it is also important for the Commission to be aware of the risk that biosecurity and trespass legislation could surreptitiously or inadvertently introduce ag-gag style laws. In 2015, the *Criminal Code Amendment (Animal Protection) Bill 2015* (Cth) was met with severe criticism for proposing ag-gag style laws that would in fact be counterproductive to animal protection.

3.4. A key issue with ag-gag laws is that they target investigators and whistleblowers who work to expose animal cruelty, rather than the perpetrators of that cruelty. These kinds of laws have been heavily criticised both in Australia and overseas for violating free speech, freedom of the press and the right for the public to be appropriately informed of matters of public interest. This opposition has come from animal protection groups, media groups, and civilian groups concerned about consumer protection, the environment and civil liberties. A detailed analysis of ag-gag laws is available on the Voiceless website.[xxviii]

3.5. The most effective means of improving animal protection and reducing activist investigations is to improve transparency in animal industries, strengthen the legal protections afforded to animals in these industries and align them with international standards and community expectations, and strengthen the monitoring and enforcement of existing anticruelty laws.

4. LIVE EXPORT

4.1. We note that the Draft Report contained no recommendations or information requests in relation to live export, despite the Commission's lengthy consideration and discussion of the topic. We have taken this opportunity to comment on the Commission's conclusions on live export and provide our own recommendations.

4.2. The Draft Report acknowledges that animal welfare regulations are not meeting community expectations about the humane treatment of farm animals. This observation is particularly relevant to live export. As the Draft Report states: *"it is critical that the community has confidence in the system used to regulate live exports."* On this point, we draw your attention to national public surveys that show the majority of Australians support a ban on the trade.[xxix]

4.3. The Draft Report states: *"The Commission is concerned that progress in furthering standards and guidelines has been very slow. This may reflect the fact that some parties wish to preserve the status quo and see merit in delay, rather than directly addressing and arguing the various animal welfare standards."* Voiceless compels the Commission to apply this observation to live export. The inevitable shift away from live export should not be inhibited or delayed due to the minority view put forward by a small group of stakeholders that benefit from the trade.

4.4. Voiceless strongly recommends a transition away from live animal export. Over the last thirty years, countless investigations have demonstrated that the Commonwealth cannot guarantee the welfare of live exported animals, nor can the industry operate in accordance with community expectations. These investigations have shown poor conditions onboard live export vessels; animal cruelty in overseas feedlots, slaughterhouses and marketplaces, and repeated breaches of the live export regulatory framework by Australian exporters.[xxx] The industry has long lost its social licence, and the fact that the Commonwealth has failed repeatedly to penalise exporters for these breaches demonstrates that the trade is incapable of being adequately regulated.

4.5. Additional control and traceability standards and auditing requirements cannot guarantee that animal welfare standards will be met, nor that Australian animals will remain within approved

supply chains, in export markets. This is because much of the cruelty and welfare concerns inherent in the trade cannot be "regulated away", including the forced change in diet and environment, heat stress, lengthy loading and travel times, and the inability of our government to legally protect animals beyond Australia's coastline.

4.6. Voiceless strongly disagrees with the Draft Report's recommendation to implement an industry quality assurance program. For the reasons outlined above, an industry-led assurance program will fail to resolve the underlying animal welfare, governance, and compliance issues. Given that the industry has failed repeatedly to comply with existing regulations, it is illogical to assume that this will change under a program that relies so heavily on industry self-regulation. Implementing such a program will serve only to further distance the Commonwealth's animal welfare policies from community expectations, and compound the community's loss of confidence in the animal welfare regulatory framework.

4.7. There are economic incentives for transitioning away from live export, including generating employment opportunities through onshore processing. Furthermore, the live export industry contributes to only a fraction of the value of Australia's livestock production. In 2014-15 live export was valued at about $1.7 billion,[xxxi] while the gross value of livestock production in this time period was about $27 billion.[xxxii] Each of the arguments put forward by the Commission for continuing the trade, including in relation to refrigeration, cultural preferences, and the issue of inducing exports from countries with lower welfare regulations has been categorically and convincingly refuted by a number of commentators.[xxxiii] The arguments do not need to be recanvassed here.

4.8. We note the Commission's recommendation for an independent animal welfare body to be "*responsible for regularly providing an independent assessment of the performance of the live export regulatory system*". If an independent animal welfare body is considered the preferred option, Voiceless recommends the federal Independent Body model proposed above. To be effective, it is essential that the federal Independent Body be responsible for overseeing the enforcement of the live export regulatory framework, as well as having the power to assist the Commonwealth in performing these enforcement functions where necessary.

Respectfully submitted by Emmanuel Giuffre and Sarah Margo of Voiceless, the animal protection institute.

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