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INQUIRY

ANIMAL WELFARE POLICY IN NEW SOUTH WALES

AN ANIMAL LIBERATION SUBMISSION

TO THE STANDING COMMITTEE ON STATE DEVELOPMENT

DOCUMENT DETAILS

Animal Liberation. 2022. A submission by Animal Liberation in response to the State Development Committee Inquiry into Animal Welfare Policy in NSW. Prepared by Alex Vince and Lisa J Ryan.

ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

INTELLECTUAL PROPERTY RIGHTS

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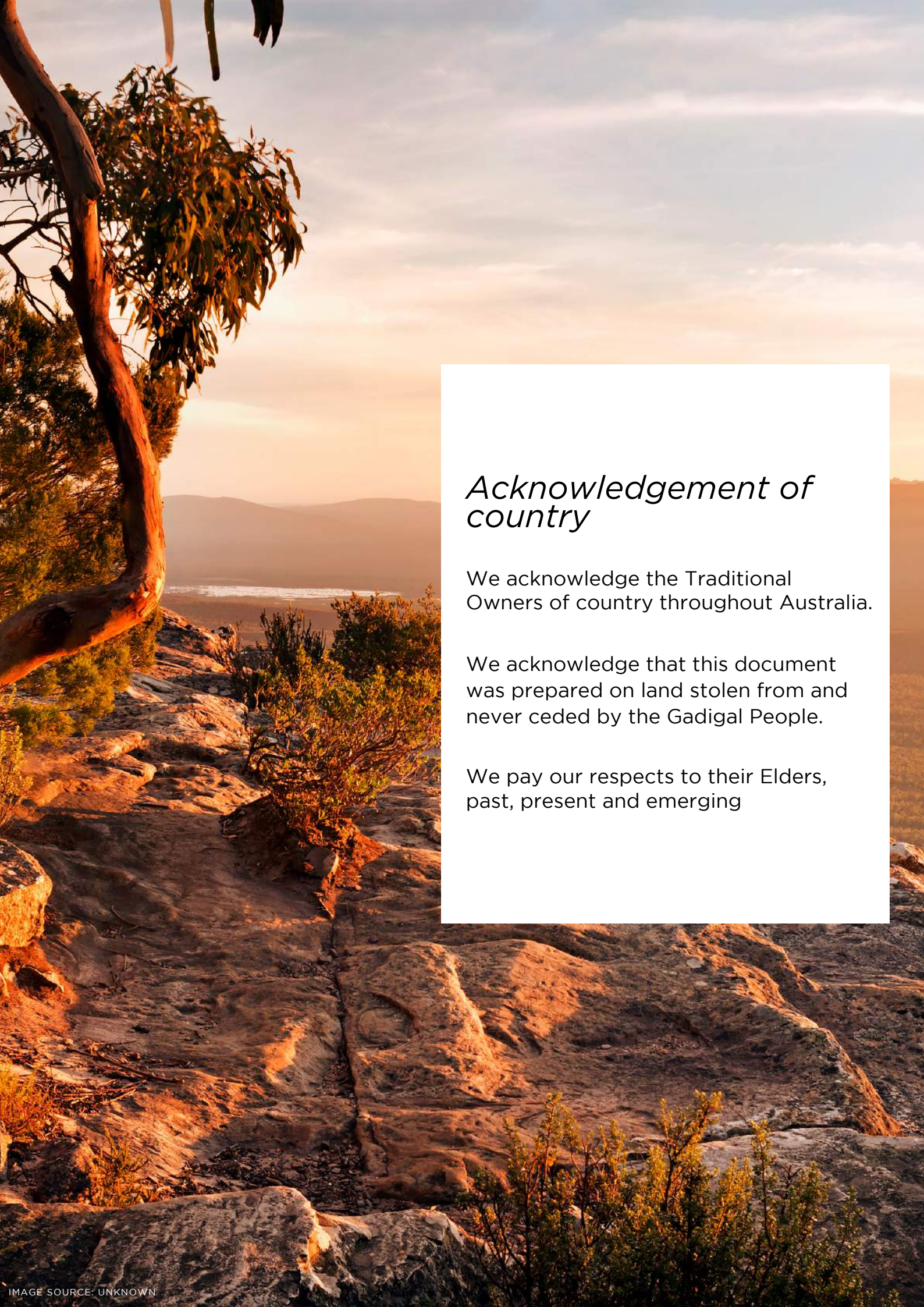
Images courtesy of Jo-Anne McArthur / WeAnimals



Acknowledgement of country

We acknowledge the Traditional Owners of country throughout Australia.

We acknowledge that this document was prepared on land stolen from and never ceded by the Gadigal People.

We pay our respects to their Elders, past, present and emerging

IMAGE SOURCE: UNKNOWN

28 February 2022

State Development Committee
Parliament of New South Wales
Via email: environmentplanning@parliament.nsw.gov.au.

ATT: State Development Committee Members

We welcome the opportunity to present this submission on behalf of Animal Liberation in response to the Standing Committee on State Development's inquiry into animal welfare policy in NSW, including the draft Animal Welfare Bill 2022.

Animal Liberation is a non-profit animal rights organisation that has operated in the field of animal justice for over four (4) decades. We have accumulated considerable experience and knowledge relating to animal welfare and protection issues during this time. We continue to pursue and promote the rights and protection of all animals. Animal Liberation is proud to be Australia's longest-serving animal rights organisation. Our mission is to permanently improve the lives of all animals through education, action and outreach.

Modern animal welfare law is based on several common principles. At its best, such legislation pursues the improvement of animals' quality of life by protecting them from cruelty and suffering. At its worst, laws can disregard or even facilitate suffering.

We request that it be noted from the outset that while the following submission intends to provide the Committee with detailed and evidence-based responses to the Terms of Reference, its contents do not contain an exhaustive commentary or assessment. Instead, our submission is intended to provide a general examination and responses to select areas of key concern. As such, the absence of discussion, consideration or analyses of any particular aspect or component of the inquiry must not be read as or considered indicative of consent or acceptance. Instead, our submission focuses on aspects that we believe warrant critical attention and response.

We note, finally, that Animal Liberation has two (2) active petitions of relevance to the present inquiry. First, our petition demanding the establishment of an Independent Office of Animal Welfare ('IOAW'), included for the Committee's consideration in the Addendum document of this submission. This public petition currently has over 26,000 signatories. Second, our petition in response to this inquiry has over 1,500 responses. This, too, is included in the Addendum for the Committee's consideration.

We thank Committee members for their objective and informed consideration of the following submission.

Kind regards,

Alex Vince
Campaign director

&

Lisa J Ryan
Regional campaign manager

LIST OF ABBREVIATIONS

AAWS	Australian Animal Welfare Strategy (Cth)*
AAWS&G	Australian Animal Welfare Standards and Guidelines (Cth)
ABS	Australian Bureau of Statistics
ACGC	Australian Chicken Growers' Council
ACMF	Australian Chicken Meat Federation
ACO	Approved charitable organisation
ACPA	*Animal Care and Protection Act 2001* (QLD)
AFS	Approved Farming Scheme (RSPCA)
AHA	Animal Health Australia
AL	Animal Liberation (NSW)
API	Animal Protection Index
APO	Animal protection organisation
ARA	*Animal Research Act 1985* (NSW)
AVA	Australian Veterinary Association
AWA	*Animal Welfare Act 1992* (ACT)
AWC	Animal Welfare Committee (UK)
AWL	Animal Welfare League (NSW)
CIWF	Compassion in World Farming
COP	Code of practice
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DA	Development Application
DAF	Department of Agriculture and Fisheries (QLD)
DAFF	Department of Agriculture, Fisheries and Forestry (Cth)*
DAWE	Department of Agriculture, Water and the Environment (Cth)
DEDJTR	Department of Economic Development, Jobs, Transport and Resources (VIC)
DIT	Department of International Trade (UK)

* indicates legislation or departments that have been replaced or otherwise abolished

DJPR	Department of Jobs, Precincts and Regions (VIC)
DPI	Department of Primary Industries (NSW)
DPIRD	Department of Primary Industries and Regional Development (WA)
Draft bill	Draft Animal Welfare Bill 2022 (NSW)
EAPA	*Exhibited Animals Protection Act 1986* (NSW)
EP&A Act	*Environmental Planning and Assessment Act 1979* (NSW)
EP&A Regs	*Environmental Planning and Assessment Regulations 2000* (NSW)
EU	European Union
FAWC	Farm Animal Welfare Council (UK)
FAO	Food and Agriculture Organisation of the United Nations
FTA	Free Trade Agreement
GRNSW	Greyhound Racing New South Wales
GWIC	Greyhound Welfare and Integrity Commission (NSW)
IOAW	Independent Office of Animal Welfare
IOAP	Independent Office of Animal Protection
MCOP	Model code of practice
OECD	Organisation for Economic Co-operation and Development
OIE	World Organisation for Animal Health
OLG	Office of Local Government (NSW)
PC	Productivity Commission
PEOA	*Protection of the Environment Administration Act 1991* (NSW)
POCTAA	*Prevention of Cruelty to Animals Act 1979* (NSW)
RNSW	Racing New South Wales
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RTF	Right to Farm
SCSD	Standing Committee on State Development
TOR	Terms of Reference
WAP	World Animal Protection
WEF	World Economic Forum

WHO	World Health Organisation
WWF	Worldwide Wildlife Fund

LIST OF FIGURES AND TABLES

EXECUTIVE SUMMARY

i. The current regulatory regime and framework governing animal welfare in New South Wales is outdated and in dire need of meaningful reform. It currently provides inadequate protections for animals of all kinds. While some fundamental reforms to the existing framework are proposed, including the Exposure Draft Animal Welfare Bill 2021 ('the draft bill'), they do not address the significant shortfalls identified in this submission and other submissions previously made in response to earlier stages of this consultation;

ii. Adjusting the draft bill to accommodate and reflect current animal welfare science, community expectations, and NSW Government commitments will require several significant changes. The narrow focus of the NSW Government on compliance and enforcement has prevented it from considering the equally fundamental issues of scientific rigour and public opinion.

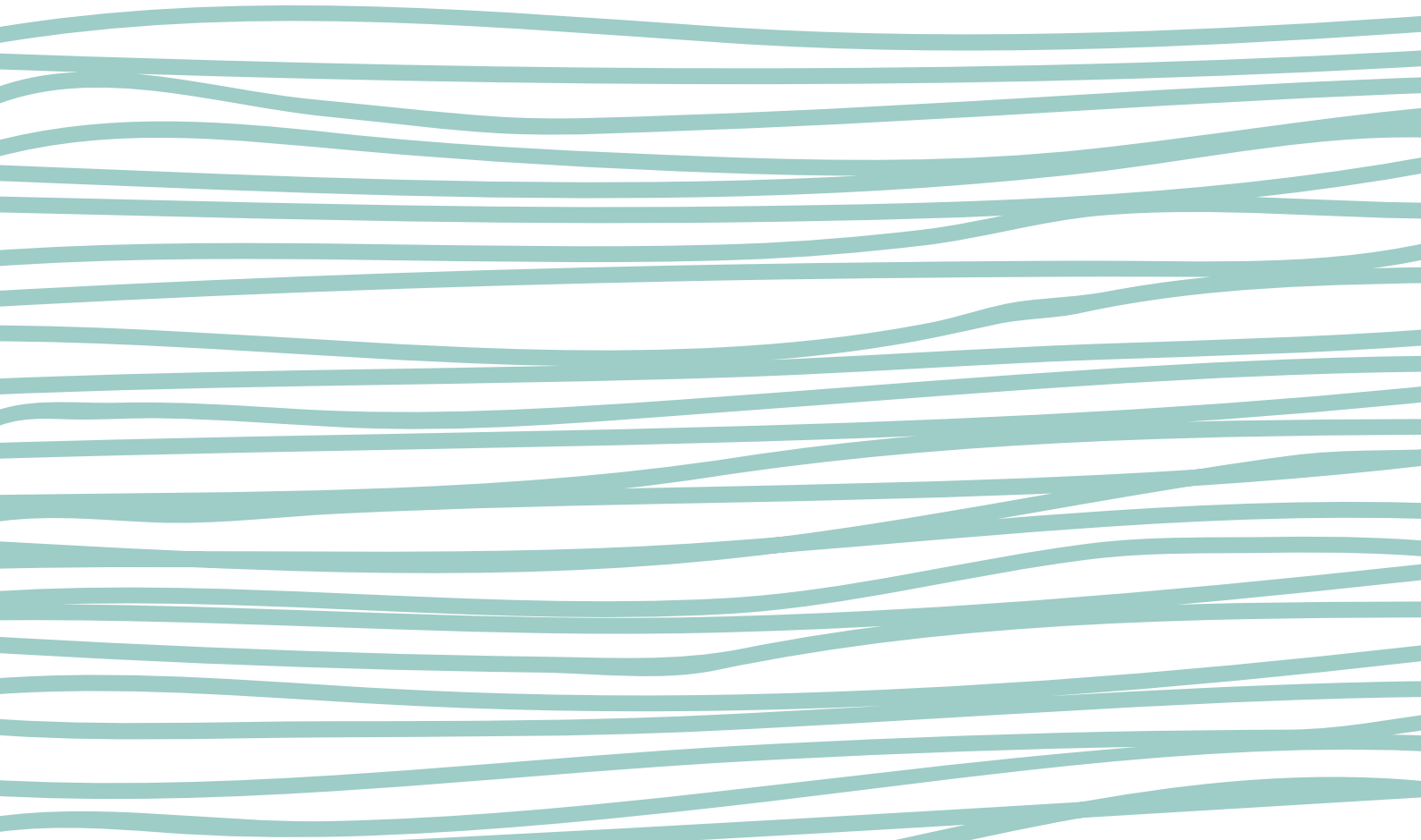
iii. The Australian public is increasingly demanding higher levels of animal protection. The absence of explicit recognition of animal sentience in the draft bill represents a structural failure to meet a key objective of the Animal Welfare Action Plan, as this is in line with an increasing community recognition of animal sentience. Specifically, we will show that this omission conflicts with the NSW Government's commitment to "ensure sound research and scientific practices are used to develop policy and legislation". On this basis, we strongly recommend and expect this glaring omission to be rectified by inserting a provision that explicitly recognises animal sentience;

iv. The animal welfare framework must be effective, consistent, proactive, and free of all conflicts of interest associated with its regulation and enforcement. To deal with the conflicts of interest identified in this submission, the NSW Government must establish a fully-funded Independent Office of Animal Welfare ('IOAW');

v. The public expects an animal welfare protection system that complies with current community expectations and is supported by sound science. Therefore, this framework must not provide for or facilitate the preferential treatment of certain species over others. Similarly, it should not provide preferential administration through inappropriate defences or exemptions. We will demonstrate that including these defences and exemptions, contained within the existing framework and reinstated in several sections of the draft bill, does not align with community expectations or contemporary animal welfare science and must be removed.

SECTION ONE

INTRODUCTION & BACKGROUND



SECTION ONE

INTRODUCTION AND BACKGROUND

1.1 BACKGROUND

Shared values and norms are the basis of law (Dror 1957). Legislation is, in essence, a mirror through which to view the moral conscience of society (Doraisamy 2020). Applying its principles should provide a rational and fair basis for using community expectations (Allsop 2016). As a result, legislation is not merely an intellectual construct but also represents collectively held societal expectations (Ibbetson 2012).

Animals have long been the subjects of law and litigation (Tischler 2008). Early examples range from debates on the ownership of wildlife to criminal prosecutions of humans for animal cruelty and, conversely, of animals for crimes they allegedly committed (Evans 1987; Girgen 2003; Barnett and Gans 2022). However, modern animal protection legislation takes a fundamentally different approach than the protections offered to humans under the law (Thomas 2022). Considering that laws ostensibly originate out of popular perspectives that reflect broadly held values (Tannenbaum 1995), and these perspectives are often contested (Mummery et al. 2014), it is vital to distinguish between 'animal welfare' and 'animal rights' in the context of this inquiry. In its practical application, animal welfare positions humanity as the apex predator, allowing society to use or otherwise exploit other animals on the condition that it is done "humanely" or with as little suffering as possible. (Walker-Munro 2015; Francione 2020). Conversely, animal rights represent an abolitionist philosophy that requires society to cease all harmful activities to animals (Sunstein 2004a). Within these perspectives, two broad approaches emerge: welfarists generally believe that animals' or humans' interests are equal, worthwhile abolitionists believe animals are individuals of intrinsic value and deserve complete liberation (Glasgow 2008).

We believe it is reasonable to conclude that an abolitionist approach, informed by the animal rights perspective, would maximise animal health and welfare while achieving the objectives and abiding by the spirit of modern animal protection legislation (De Vriese and Handtrack 2021). While the following submission will employ the generic term "animal protection" unless a particular perspective is being considered (Taylor 1999), we note that it would be incorrect to characterise any of the provisions contained within the draft bill as conducive to the rights perspective. This is primarily because, despite the spirit of the law, it is at odds with contents that continue to permit rather than prohibit harm to animals. As an abolitionist organisation, this position will be evident in our interpretation and response to the Terms of Reference ('TOR') provided by the Committee.

1.2 INTRODUCTION

Animal Liberation welcomes the invitation and opportunity to provide the following submission in response to the inquiry into animal welfare policy in NSW. We understand that the current inquiry into the proposed animal welfare policy, including associated legislation and regulations, was referred to the Standing Committee on State Development ('the Committee') (SCSD 2021).

Besides the consideration of policy amendments or associated proposals to "streamline animal welfare laws", "reduce and remove unnecessary regulation" and "ensure existing policy and regulatory arrangements remain appropriately balanced", a key component of this inquiry is the review of the proposed draft bill (SCSD 2021). Accordingly, our response to the draft bill is provided in section 4 of this submission.

The following subsections will outline and discuss our concerns about NSW's current approach to animal protection. In addition to the modernisation, implementation, improvement, engagement, and investment commitments made by the NSW Government in its Animal Welfare Action Plan (discussed below), subsequent sections will inform and support our belief that a modern and meaningful animal welfare framework must:

- **prioritise** a legal approach that safeguards, improves and provides for positive animal welfare outcomes, while reflecting contemporary animal welfare science and community expectations;
- **ensure** timely and consistent application to subservient legislation, including current and forthcoming regulations, Codes of Practice ('COPs'), Guidelines and Standards, that do not contain sweeping exemptions that render provisions of the primary legislation impotent;
- **facilitate** proactive and constructive collaboration that advances and promotes meaningful investment in positive animal welfare outcomes, including utilising the expertise and experience of an inclusive range of diverse non-governmental organisations ('NGOs');
- **guarantee** a compliance and enforcement regime that is appropriately robust, efficient and unimpeded by conflicts of interest or insufficient resourcing.[1]

While we welcome and appreciate the opportunity to provide the following submission, we would like to express our uncertainty about why it is being undertaken by the Standing Committee on State Development ('SCSD'). In particular, it is unclear why this inquiry is not being conducted by Portfolio Committee No. 4 - Regional New South Wales, Water and Agriculture ('Portfolio Committee No. 4'), given this Committee has previously undertaken a range of associated inquiries.

For example, Portfolio Committee No. 4 is currently inquiring into the approved charitable organisations ('ACOs') under the primary legislation the draft bill the NSW Government proposes to replace in the inquiry this submission is responding to (i.e., the *Prevention of Cruelty to Animals Act 1979* or 'POCTAA'). In addition, Portfolio Committee No. 4 has previously undertaken several inquiries related to animal welfare, including the inquiries into the long-term sustainability of the dairy industry in New South Wales (2020/21), the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019 and the Right to Farm Bill 2019 (Parliament of NSW n.d.-a).

1 We note that many of these principles are reflected and in line with the commitments of the NSW Animal Welfare Action Plan (DPI n.d.-a; DPI n.d.-b).

We note that the present Committee's recent work has not focused on or related to animal welfare issues. Rather, the Committee's most recent inquiries relate to energy-related industries.[2] The only previous inquiry conducted by this Committee that was broadly associated with animal welfare was the 2007 inquiry into aspects of agriculture in NSW (Parliament of NSW n.d.-b). Even this, however, did not deal with issues relating to animal welfare in any meaningful manner. When it considered welfare, the 2007 inquiry focused principally on human welfare. This predominantly concerned adverse social and financial impacts on their commercial operations (Parliament of NSW 2007: 57, 64). Despite containing a recommendation that the Department of Primary Industries ('DPI' or 'the Department') collaborate with industry in developing marketing campaigns for kangaroo meat products (Parliament of NSW 2007: xiii), an issue with widely accepted adverse animal welfare outcomes (Thorne 1998; Ramp 2013; Ben-Ami et al. 2014; Thompson 2021), the sole reference to animal welfare contained within the final report of this inquiry related to economic impacts on producers from regulations governing the size of battery cages used in egg production (Parliament of NSW 2007: 113-114).[3] It is reasonable to conclude that these credentials do not instil the necessary trust in the current investigation into a public interest issue with such broad and serious implications.

It would appear, based on the previous work undertaken by Portfolio Committee No. 4, that this alternate Committee may have more relevant experience in the matters currently under consideration. For example, Portfolio Committee No. 4, chaired by the Hon. Mark Banasiak in 2020, has undertaken inquiries into matters of direct relevance to the current reform process (Parliament of NSW 2020a; Parliament of NSW 2020b). For these reasons, one recommendation included in section 5 of this submission is for the SCSD to review and consider these inquiries' findings in its deliberation of the issues at hand.

This section will conclude with a brief timeline of the current reform process that led to the present inquiry. Finally, we will outline several associated concerns with this process before responding to the TOR.

1.2 TIMELINE OF THE CURRENT REFORM PROCESS

1.3.1 | THE NSW ANIMAL WELFARE ACTION PLAN (2018)

In May 2018, the NSW Government released the NSW Animal Welfare Action Plan ('the Action Plan'). The purpose of this Action Plan, according to the government, was to modernise the state's primary animal protection legislation, the four-decade-old Prevention of Cruelty to Animals Act 1979 ('POCTAA'), to establish a framework that focuses on "outcomes that reflect evolving animal welfare science and community expectations" (DPI n.d.-a; DPI n.d.-b). According to an undated communique sent to the Committee's Chair by former NSW Agriculture Minister Adam Marshall, "the Action Plan outlined the NSW Government's commitment to safeguarding animal welfare and providing a strong regulatory framework" (Marshall n.d.).

Part of the commitments stemming from the Action Plan are the "streamlining"

2 Namely, the 2020 inquiry into the development of a hydrogen industry in New South Wales and the 2019 Inquiry into the Uranium Mining and Nuclear Facilities (Prohibitions) Repeal Bill 2019.

3 We note that the NSW Government's response to this inquiry contained a commitment to provide "significant ongoing resources to primary industries science and research" and highlighted the government's role in funding the agricultural sector, including via industry partnerships (NSW Government 2008: 4). Though the government justified this on the basis that there are "strong issues of market failure" in the agricultural sector that "require ongoing government investment" (NSW Government 2008: 5), like the Committee's final report, this document similarly did not refer to the primary issue under consideration: animal welfare.

and "strengthening" of the existing animal protection framework (DPI n.d.-a; DPI n.d.-b; Marshall n.d.). While the Action Plan contained an objective that identified its guiding principle as ensuring that "people responsible for animals provide for their welfare in line with the best available science and community expectations" (DPI n.d.-b: 1), other stated goals included:

- **modernising** the NSW animal protection policy and legislative framework;
- **implementing** reforms to companion animal breeding practices;
- **improving** the effectiveness of compliance and enforcement efforts;
- **ensuring** sound research and scientific practices are used to develop policy and legislation;
- **engaging** with key stakeholders and ensuring that all views are respected and considered in developing policy and legislation;
- **investing** in systems and processes (DPI n.d.-b: 1).

These commitments will form a primary consideration in many of our responses to the TOR. To meet these goals, the Department undertook two (2) stages of community consultation. These are outlined in the corresponding subsections below. According to the Action Plan, the final stage of the modernisation goal is the introduction of “modern, streamlined, risk-based and outcomes-focused” animal welfare legislation (DPI n.d.-b: 1). Animal Liberation understands that this corresponds with the draft bill considered under Term 2 of this inquiry. Animal Liberation will provide a detailed response to this goal in the subsection of this submission corresponding to the draft bill.

1.3.2 | THE ANIMAL WELFARE ISSUES PAPER (FEBRUARY 2020)

In February 2020, the NSW Government released its Animal Welfare Reform Issues Paper (‘Issues Paper’), seeking public feedback on the state's key issues relating to existing animal welfare laws. This process received many submissions and survey responses (~1,100) (Marshall n.d.).

Though the Issues Paper is no longer publicly available, Animal Liberation notes that it maintained that the “vast majority” of individuals whose activities involve animals, including farmers, companion animal breeders and animal researchers, are “committed to ensuring high standards of welfare for the animals in their care”. It argued that these operators often function “well above the baseline set by legislation and actively seek out ways to improve welfare outcomes” (DPI 2020: 8).

We maintain that it is impossible to accurately arrive at this conclusion because inspections of such operations are extremely low. For example, despite the ongoing operation of many thousands of such facilities, RSPCA NSW reported carrying out only 93 "routine inspections" in 2018-19 (RSPCA Australia 2019a).

Though this figure had risen to 139 inspections in 2019-20 (RSPCA Australia 2020b), this remains a small percentage of all operations across the state. On this basis, it cannot be accurately considered a reliable gauge of "high standards" of NSW animal welfare.

As such, Animal Liberation holds that the assertion included in the Issues Paper that the “vast majority” of operators are “committed to ensuring high standards of welfare” and achieve these “well above the baseline set by legislation” is unverifiable. Similarly, we hold that it is equally difficult to support the assertion that such operators “actively seek out ways to improve welfare outcomes” without access to the evidence used to base this claim.

1.3.3 | THE ANIMAL WELFARE DISCUSSION PAPER (AUGUST 2021)

Community feedback received in response to the Issues Paper informed the subsequent Discussion Paper released between August and September 2021. Feedback received during this consultation period amounted to almost 5,000 public submissions (Marshall n.d.). The NSW Government subsequently used this feedback to draft the Animal Welfare Bill 2021. Our responses to this draft bill are provided in the corresponding subsection of this submission.

The previous Agriculture Minister's communique to Catherine Cusack contains the TOR of this inquiry (Marshall n.d.; SCSD 2021; SCSD 2022).

The recommendations we provided to the Department during this consultation stage that remain relevant to the draft bill's provisions will be further outlined in subsequent sections of this submission for the Committee’s consideration.

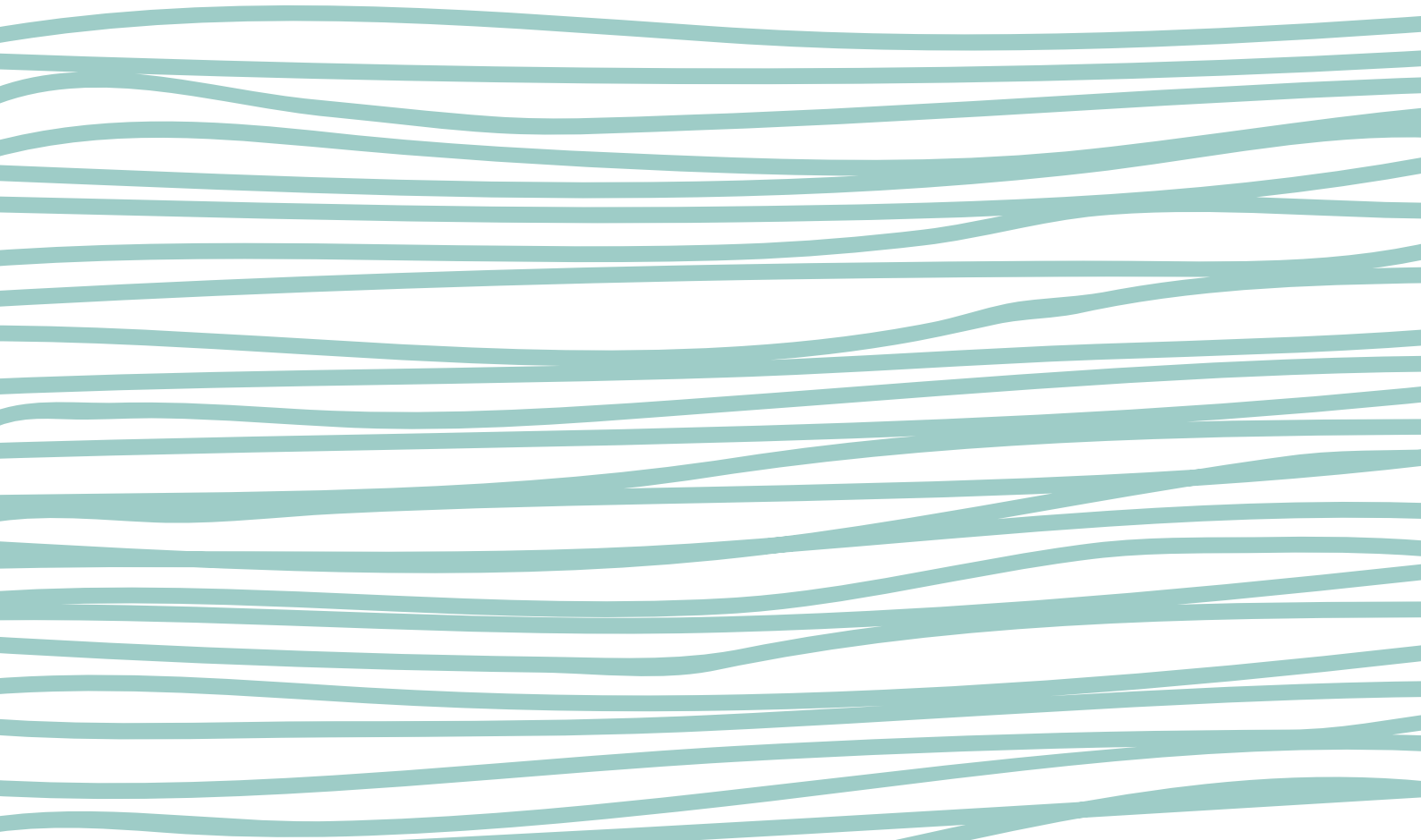
1.3.4 | GENERAL COMMENTS ON THE REFORM PROCESS

Despite the measures outlined above, we maintain significant deficiencies, inconsistencies and structural failures in the outcomes these consultations have produced. In practice, these effectively reproduce a framework that is structurally unable to achieve the primary objectives espoused by the Government (i.e., the protection of animals and the prevention of cruelty).

Though we have welcomed previous stages of this process on the understanding that these represented an opportunity to correct outstanding deficiencies by providing informed feedback, we note that valid and knowledgeable recommendations previously provided to the Department for consideration have not been adequately considered or incorporated. Accordingly, our submission will question whether this outcome represents a violation of commitments made by the NSW Government throughout this reform process. However, despite such concerns, we look forward to and anticipate this submission being transparently and thoroughly considered by the Committee.

SECTION TWO

ANIMAL WELFARE POLICY IN NEW SOUTH WALES



SECTION TWO

ANIMAL WELFARE POLICY IN NEW SOUTH WALES

2.1 "NOT OF SENTIMENTALISM, BUT OF GOOD SENSE": A BRIEF HISTORY OF ANIMAL LAW

Animal cruelty affects millions of animals worldwide and is a serious social issue that warrants critical attention (Flynn 2001; Tiplady 2013; Jones 2015; Shooster 2015). As a result, animal protection legislation and various related instruments have been developed as the primary tools for defining, penalising, and discouraging acts of animal cruelty (Morton et al. 2020).

Worldwide, such laws have existed for centuries (Glasgow 2008; Heikkila 2018). The world's first modern animal welfare statute, enacted in the United Kingdom in 1822 and commonly known as 'Martin's Act' (Jamieson 1990),[4] was passed on the basis that humans "have neither the moral nor the legal right" to inflict "unnecessary harm" on other animals (Sweeney 2017). At the time, it was noted that this was a conclusion the legislature had reached "not of sentimentalism but of good sense" (ibid).[5] Australia enacted its first piece of animal protection legislation in 1837 in Van Diemen's Land (Lutriwata), followed by NSW in 1850 (Jamieson 1991; Walker-Munro 2015). Though these laws were emerging at the time of the British invasion of Australia (c. 1788) (Salter 2009), similar laws whose broad objectives are the prohibition of animal cruelty have been enacted in each Australian State and Territory (Weldon 2008; Arbon and Duncalfe 2014; Morton et al. 2020).[6] However, the last two decades have seen increased public concern regarding animal welfare issues (Taylor and Signal 2009a; Bennett and Blaney 2003). The following subsection will show that, rather than activist sentiment making up an anomaly of contemporary attitudes to animal welfare, it represents the norm (Futureye 2018; McGreevy et al. 2019).

2.2 "AN IDEA WHOSE TIME HAS COME": COMMUNITY ATTITUDES TO ANIMAL WELFARE AND PROTECTION

Concerns about the contemporary approach to the protection of animals have informed the development of a specific legal discipline known as animal law (Wise 2003; Welty 2007; Senatori and Frasch 2010; Tannenbaum 2013; Kyriakakis 2017). In 2008, the Australian Law Reform Commission journal identified animal welfare, rights and protection as "the next great social movement" (Mummery et al. 2014). While animal law synthesises various principles and legal approaches (McEwen 2011), much of this emerging discipline focuses on consistently elevated property status over animal welfare (Blosh 2012; Cupp 2016). Australian studies have shown that this approach is inconsistent with public awareness and perspectives of appropriate animal protection under the law (Shyam 2018). This is particularly

4 Though this statute made it a crime to "wantonly and cruelly beat, abuse or ill-treat" cattle, its purview would expand with the passing of amendments and reforms (Barnett and Gans 2022).

5 While Animal Liberation maintains that the concept of "unnecessary harm" is a legal misnomer whose function effectively legalises acts of animal cruelty, our position blends ethical and scientific considerations. This will become clear in our responses to the TOR.

6 See the *Animal Welfare Act 1992* (ACT), the *Prevention of Cruelty to Animals Act 1986* (VIC), the *Animal Care and Protection Act 2001* (QLD), the *Animal Protection Act 1999* (NT), the *Animal Welfare Act 1985* (SA) and the *Animal Welfare Act 2002* (WA) (Morton et al. 2020).

relevant to increasing community awareness of animal sentience and corresponding expectations of the capacity to provide appropriate legal protections (Kotzmann 2020a). The following subsection will demonstrate the impacts this inconsistency has on community attitudes in Australia, concluding that the NSW Government must make structural changes to its animal protection framework to reflect both scientific standards and community expectations.

Research is increasingly showing that community concern for issues relating to farmed animal welfare in Australia is growing (Bray et al. 2017; Doughty et al. 2017; Buddle et al. 2018; Coleman et al. 2018; Futureye 2018; McGreevy et al. 2019). This evolution is shifting attitudes from a traditional utilitarian perspective of animal welfare to a more compassionate approach to its legal application (Singer 1993; Franklin and White 2001; Mazur et al. 2006; Gruen 2018; Parbery and Wilkinson 2012). These attitudes are widely recognised as important determinants of consumer behaviour and community expectations (Coleman et al. 2014), with greater knowledge of industry practices associated with decreasing rates of consumer support (Erian and Phillips 2017). Due to these emerging attitudes, the Australian public expects corresponding advancements in welfare regulation that match their expectations (McGreevy et al. 2019; Morton et al. 2020). As the following subsection will demonstrate, such attitudes will increasingly inform expectations and generate corresponding demands on governments and producers alike (Futureye 2018: 25).

It is apparent that regulatory approaches and community attitudes to animal welfare stem from exposure of egregious animal cruelty, often in various forms of media exposure (Molloy 2011; Marceau and Chen 2016; Rice et al. 2020; Manning et al. 2021). Many of these developments result from exposés conducted by private animal cruelty investigators (Chen 2016; Lazare 2020). While the exposure of incriminating material relating to animal welfare offences has triggered the introduction of a range of draconian laws intended to stifle its collection and dissemination (Potter 2011; O'Sullivan 2014; Potter 2017), it is apparent that many of the most recent events outlined in the timeline provided as Figure 1 below would not have been possible without such exposure (Russell 2017).[7] Moreover, structural changes in animal welfare regulation would not have occurred without these exposés. Two primary examples of this are the exposés of live baiting and live export (Chen 2016; Englezos 2018). For example, the McCarthy Review recommended a structural change of focus from animal mortality to animal welfare indicators (Moss 2018) after the conditions on live export ships were exposed by an animal protection organisation ('APO') (Hutchens and Wahlquist 2018; McCarthy 2018). While the bans that these exposés generated proved to be temporary, the underlying triggers that yielded strong regulatory action suggest that society is becoming increasingly less tolerant of animal cruelty and more interested in ending blatantly harmful practices (Shyam 2018).

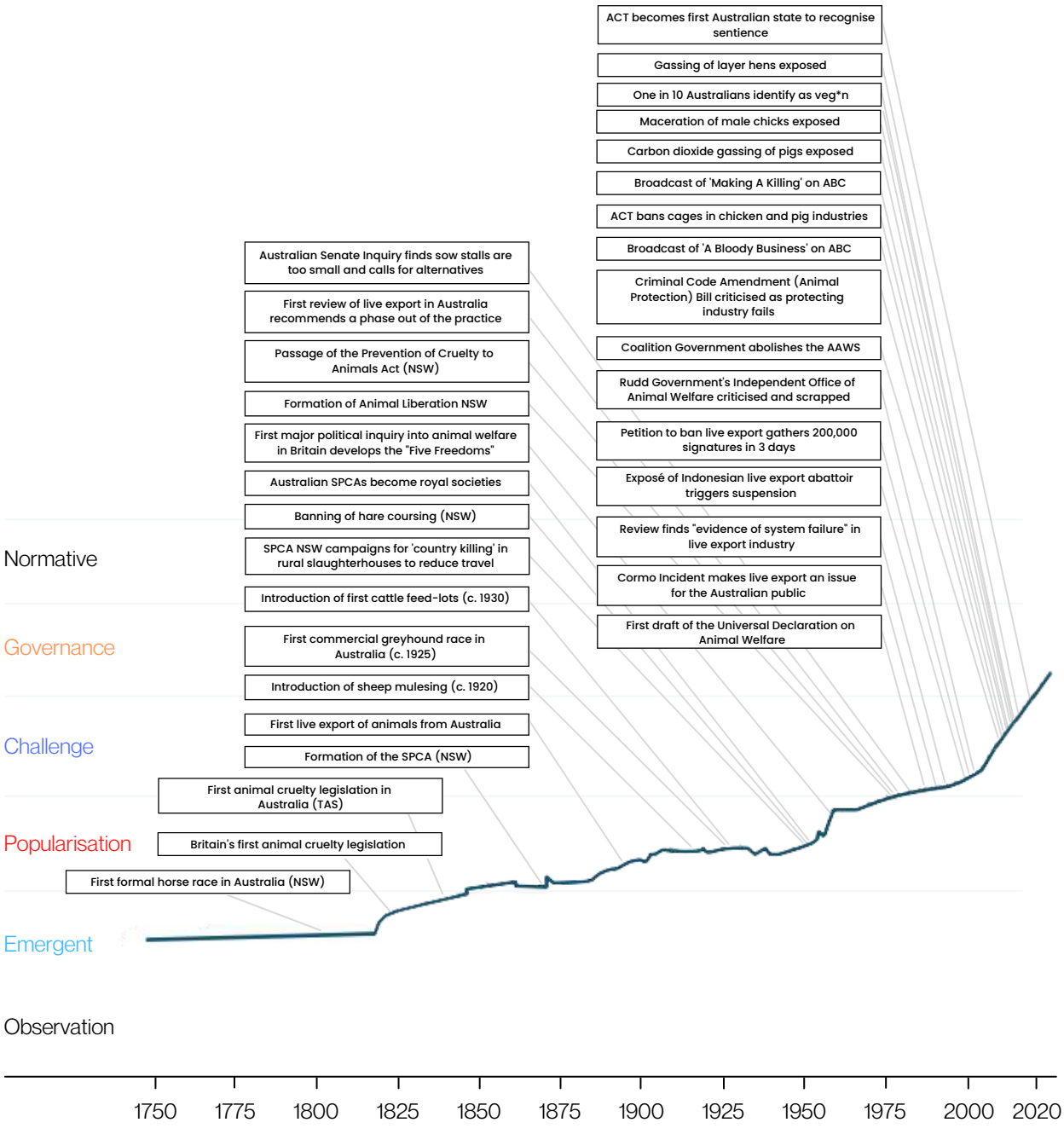
The mainstream acknowledgement of animal sentience, further detailed below, and the sustained public concern for issues relating to the treatment of animals suggest that animal welfare is an issue of legitimate and increasing public interest (McCausland et al. 2018). Moreover, the value of animal cruelty exposés that have

7 Though these laws, commonly referred to as "ag-gag" on the basis that they are "intended to restrict or 'gag' animal activists who capture and disseminate footage of agricultural animal facilities" (McCausland et al. 2018), originated in the United States, there have been several introductions of similarly inspired bills in Australia (Potter 2014). RSPCA Australia explains that the "surge of interest in enacting [ag-gag] legislation corresponds with a sharp increase in the use of direct monitoring and investigative activities by animal activists" (RSPCA Australia 2013). Examples of such laws in Australia include the Surveillance Devices Act 2016 (SA), the Biosecurity Act 2015 (NSW) and the Criminal Code (Animal Welfare) Amendment Bill 2015 (Cth) (Russell 2017). Many of these forays into introducing ag-gag laws in the state legislature, such as the 2018 NSW Legislative Council Select Committee on Landowner Protection from Unauthorised Filming or Surveillance, were strenuously denounced. Animal Liberation's response to the inquiry mentioned above noted that a common element of such bills was altering and/or adding offences to existing laws, primarily "seek[ing] to prejudice and unfairly penalised private animal cruelty investigators from performing investigations intended to provide evidence of systemic animal cruelty in service of a public interest" (AL 2018: 10). In its published submission in response to the same inquiry, for example, a consortium of key Australian media organisations held that "combating animal cruelty must be the solution rather than unfairly targeting those who seek to expose it" (AAP et al. 2018: 2).

generated policy action by both State and Federal governments is also increasingly recognised by decision-makers. We note, for example, statements made by Queensland's Premier, the Hon. Annastacia Palaszczuk, in response to the commission of inquiry, established into the greyhound racing industry in the wake of the 2015 live baiting scandal: "the very fact that we are having an open discussion about this industry is thanks to Animal Liberation Queensland and Animals Australia prompting a joint police and RSPCA investigation followed by a hard-hitting report from the ABC and Four Corners which exposed the evidence which led to the commission" (Palaszczuk 2015).

Fig. 1: History and trajectory of societal expectations of farmed animal welfare*

* SOURCE: ADAPTED FROM CHEN (2016) AND FUTUREYE (2018)



2.2.1 COMMUNITY EXPECTATIONS ON ANIMAL WELFARE IN AUSTRALIA

Figure 1, adapted from a recent Commonwealth-commissioned investigation of Australian attitudes to farmed animal welfare and provided on page 11, notes that it charted its upwards trajectory against a select history detailing how the community has viewed the issue of farmed animal welfare over time (Futureye 2018: 20). Though increasing global demand for animal products has been the primary driver of the intensification of production systems (Akhtar et al. 2009), this intensification has also produced a corresponding rise in community expectations (Thompson 2008; Godfray and Garnett 2014; Coleman 2018). The report explains that its ascending curve situates the issue of farmed animal welfare in "the challenge phase", indicating that the issue is experiencing an increasing amount of public scrutiny, mainstream advocacy, resistance and politicisation (ibid). As Figure 3 demonstrates, this phase is characterised by a polarisation of competing perspectives, including those held by welfarists and abolitionists outlined in subsection 2.1. Such polarisation is particularly pronounced in the divergent views of decision-makers and the general public and what each considers appropriate regulation of animal welfare under the law (Futureye 2018: 26).

The trajectory outlined in Figure 1, and later in Figure 2 on page 13, demonstrates that attitudes towards animal welfare is "accelerating" towards the governance stage (Futureye 2018: 25). In this stage, significant policy responses from businesses and governments emerge (Futureye 2018: 24). Critically, protecting the status quo becomes "a minority view" (Futureye 2018: 26). Accordingly, policy changes create "a new normal" triggered by pressure on the industry to ensure its practices and behaviour reflect societal values associated with higher expectations of farmed animal welfare (Futureye 2018: 25). It is our informed conclusion that Australian attitudes are quickly approaching this phase. The changes that can be expected in this phase are outlined in Figure 3.

The report predicts that, given the current trajectory illustrated in Figure 1, the medium-term future outcomes of an increasingly informed public will "begin rewarding businesses that meaningfully accommodate farm animal welfare" and "demand more effective regulation" from governments (Futureye 2018: 20). This will lead to the development of the cultural conditions described above that make current practices are increasingly unviable and at risk of widespread public censure. It similarly notes that "emotive images of animal welfare abuses and growing ideas", particularly relative to animal sentience and the rights of animals, are "driving increasing maturity of farm animal welfare" in Australia (Futureye 2018: 20). Growing concern about this issue, which we further discuss concerning its conspicuous absence from the provisions of the draft bill, is represented in Figure 2. As such, this figure will become particularly relevant to our discussion of the validity of the current reform process and its alignment with government commitments. In this way, it is possible to predict regulatory changes that will be undertaken in response to increasing community concerns about the treatment of animals and their relative protection under the law.

While these incidents generated widespread public condemnation (Petrow 2012; Chen 2014), thereby influencing attitudes and public opinion (Ragusa 2018), we have demonstrated that the views that are the impetus for outrage are widespread in the Australian population (see the case study provided on pages 15-18). Thus, of particular relevance to the current inquiry is a growing perception that animal welfare regulations are not meeting community expectations (PC 2016) and that laws do not reflect contemporary science's widely accepted standards (Futureye 2018). This increasing concern has generated a corresponding rise in assessments

of the role and efficacy of the law in the regulation of animal welfare (Allen et al. 2002; Sharman 2002; Sims et al. 2007; Boom and Ellis 2009; Ellis 2010; Bailey et al. 2016; Ledger and Mellor 2018; Morton et al. 2018). Such concern has also informed several recent reforms to animal protection frameworks in many Australian jurisdictions. These are further detailed in the subsequent sections of this submission below.

Fig. 2: Historical trajectory of community attitudes to animal sentience*

* SOURCE: ADAPTED FROM FUTUREYE (2018)

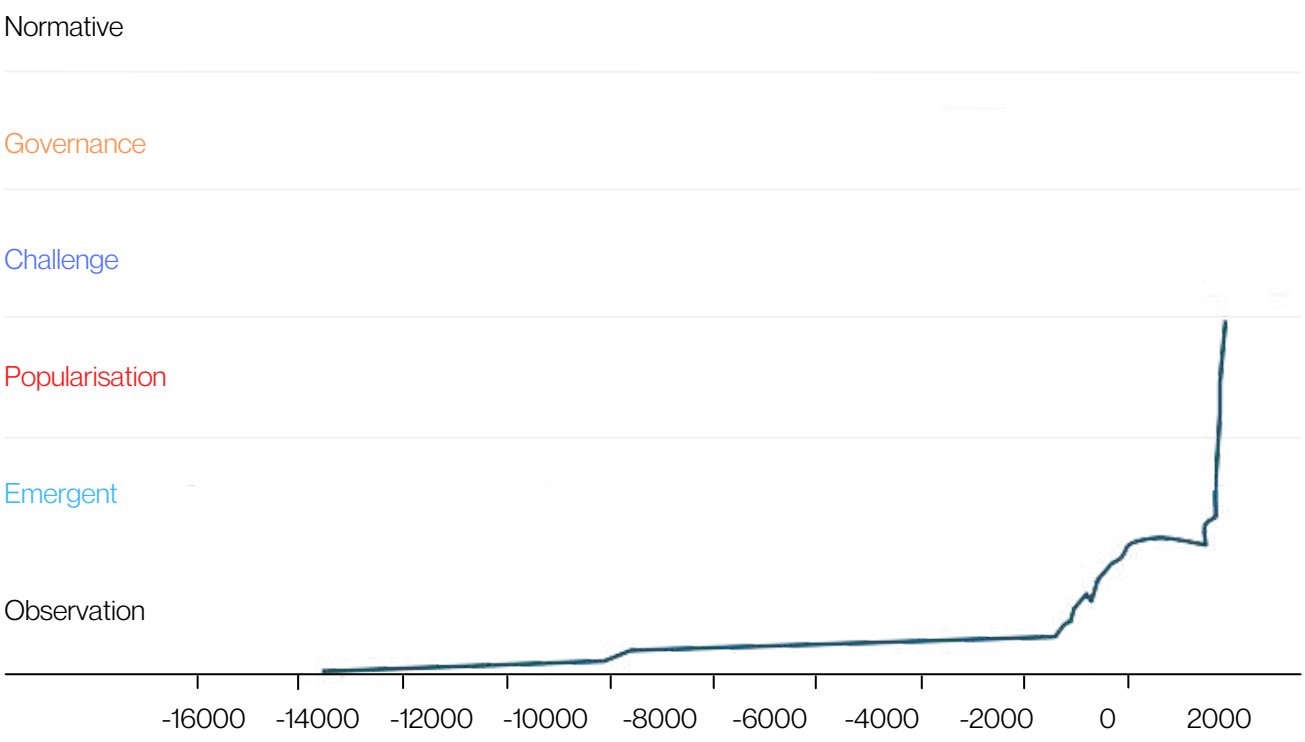


Fig. 3: Regulatory expectations relative to social maturation phase*

* SOURCE: ADAPTED FROM FUTUREYE (2018)

Social maturation phase	Regulatory regime	Relationship Industry > regulator	Enforcement	Severity of consequence	Political interference	Political interference to support the status quo
Observation	No regulation specific to issue	Non-existent	None	None	Possible but unlikely	Unnecessary
Emergent	No regulation specific to issue	Non-existent	None	None	Some voice concerns or dismiss them	No major action
Popularisation	Special interest groups call for specific regulations. Industry dismisses need for external regulation.	Regulator attentive to developments	More attention paid to existing regulations	Breaches of existing regulation paid more attention	Fines levied but considered insufficient	Voices on both sides now exist. Some voices clearly support the status quo
Challenge	Regulators begin to set new agendas for new . policy. Industry tends to insist self-regulation is sufficient	Relationship now under public scrutiny. Conflicts of interest are drawn into question	Regulator criticised for failures to punish breaches Self-regulation remains strong but increasingly uncertain	Consequences are more frequent and may be tougher. Fines are levied but considered insufficient	Champions emerge on both sides. Issues become more polarised	Politicians are accused of corruption and/or vested interests. Open campaigns against reform
Governance	Regulations tend to to be tough and align with outrage. Self-regulation is significantly weakened.	Regulator under intense scrutiny to prove that there is no conflict of interest	Enforcement must be demonstrated and publicly communicated. The dialogue is about "crack downs" and "pulling the industry in line". Self-regulation is untenable	Consequences are more likely and likely severe. While criminal charges are unlikely, regulatory licences are more easily revoked and fines are punishing	Issue is highly polarised - it may be the base of campaigns. Pro-regulatory voices become mainstream	Protecting the status quo is a minority view, but strongly entrenched.
Normative	Regulation is very clear	Regulator is clearly independent. Conflicts of interest are perceived to not exist	Punishment is swift and highly publicised. Breaking the norm is close to "reputational suicide"	Punishment is swift and severe. Criminal charges may be laid.	Issue is considered resolved polarisation abates	Status quo now protects the new norm. Voices that that advocate for 'the old ways' are seen as fringe and regressive

CASE STUDY ONE:
HAWKESBURY VALLEY MEAT PROCESSORS

SOURCE: SKATSSOON (2012)

Farmed animals account for 98% of all animals killed each year in the United States (Wolfson and Sullivan 2004), and it is likely that corresponding Australian figures are substantively the same (Sharman 2002). Though the 2015 live baiting scandal, briefly discussed above, triggered the temporary banning of greyhound racing in NSW (White and Godfrey 2016; Slezak 2016) and shows increasing political awareness that the practice is losing its social licence (Teh-White 2017; Duncan et al. 2018; Hampton et al. 2020), there have been few domestic cases with similar conclusions relative to farmed animals. The following case study will demonstrate significant changes in community expectations regarding the treatment of farmed animals. In subsequent subsections based on the data outlined in a report recently produced by a Commonwealth-commissioned survey, we will show that current NSW laws, including those proposed under the draft bill, continue to be incongruous with existing and emerging expectations.

In 2012, footage of employees abusing sheep, cattle, pigs and goats was recorded over six days by concerned staff members wearing pinhole cameras at Hawkesbury Valley Meat Processors ('HVMP') in Wilberforce, NSW (Wood 2012; Anon. 2013a; RSPCA Australia 2021a). Animal Liberation then provided the footage to the authorities (Tovey 2012). Upon receiving the footage, the NSW Food Authority shut down operations at HVMP as investigations began (RSPCA Australia 2021a).

The footage showed animals repeatedly "bashed with poles", "slashed with knives", skinned while conscious, and an "inadequately stunned goat [who] was subjected to a prolonged decapitation" (Bosworth 2012; Rosenburg and Cubby 2012; AAP 2013). The contents of the footage drew direct comparisons with the abuse recorded at Indonesian abattoirs (Anon. 2012a;

CASE STUDY ONE CONTINUED

Vollmer 2012). Though reports described the case as “sickening” (AAP 2013), “disturbing” (Tovey 2012), “gut-wrenching” (Vollmer 2012), “horrifying” (Skatssoon 2012), and “inexcusable” (Wood 2012), representatives of the Food Authority continued to maintain that the cruelty captured represented a “rogue operation” and was “not representative of the industry as a whole” (Tovey 2012). This conclusion was made despite public acknowledgements that the contents of the footage depicted “acts of gross animal mistreatment” (Vollmer 2012) and represented “one of the worst cases” of animal cruelty the Food Authority had ever seen (Rosenburg and Cubby 2012; Skatssoon 2012).

The Primary Industries Minister at the time, Katrina Hodgkinson, who had previously stated that animal rights activists are "akin to terrorists" (Potter 2014), remarked without evidence that while the footage “may well be a one-off” (Vollmer 2012), it depicted offences under POCTAA and the Food Regulation 2010 (Vollmer 2012; Anon. 2012a; Rosenberg and Cubby 2012; Anon. 2013a). Nine animal cruelty charges were subsequently laid (Anon. 2013b). While the Food Authority advised that it was “contacting all abattoirs to remind them of their obligations under animal cruelty laws” (Skatssoon 2012), the facility reopened one month later under several new conditions. These included amendments to its safety program, the training of staff in nationally approved animal welfare programs, the installation of CCTV cameras to monitor its treatment of animals, the employment of two specialist consultants, modifications to its infrastructure and increased audits by the Food Authority and RSPCA NSW (RSPCA Australia 2021a).

The case is considered a landmark insofar as it triggered new mandatory requirements (Anon. 2012d; RSPCA Australia 2021a) and a statewide review of all existing abattoir operations (Skatssoon 2012). The review found that “oversight and commitment to compliance with the Standard needs to improve dramatically” (NSW Food Authority 2013: 2). It similarly found that section 7 of the Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption to be “inadequate by itself to assess compliance with animal welfare practices” (ibid). The Food Authority published a report containing several recommendations. These included:

- using existing compliance and enforcement policy on businesses that fail to upgrade their animal welfare standards;
- making compliance with the Industry Animal Welfare Standards – Livestock Processing Establishments – Preparing Meat For Human Consumption a legal requirement;
- requiring abattoirs to employ staff that have completed a recognised form of animal welfare training and for these staff members to be present at all times the abattoir is operating;
- requiring the appointment of Animal Welfare Officers (‘AWOs’) at all abattoirs to ensure animal welfare is monitored;

CASE STUDY ONE CONTINUED

- requiring every person on the premises involved in the handling of live animals, up to the point of death, must have either completed a recognised form of animal welfare training or have been assessed as competent by an appropriately trained person;
- updating and modernising inadequate infrastructure, including knock boxes and stunning equipment, regardless of the anticipated costs to operators;
- improving security at domestic abattoirs and;
- incorporating the Animal Welfare checklist developed and used by the inspectorate as part of the Authority's assessment system when carrying out unannounced inspections or audits of premises.

It is notable that while the NSW authorities had been monitoring the facility "for some time" (Vollmer 2012) and RSPCA NSW acknowledged receiving complaints about the abattoir before the footage was obtained by concerned staff members (Rosenberg and Cubby 2012; RSPCA Australia 2021a), the Primary Industries Minister professed no awareness of these matters (Vollmer 2012). Similarly, the Food Authority defended its regulatory approach (Tovey 2012). Despite receiving an unknown number of complaints, the RSPCA maintained that none were considered sufficient to warrant prosecution under POCTAA (ibid). At the close of investigations into the facility, its operators were fined and "placed on the NSW government's name and shame register" (ibid). A criminal investigation carried out by RSPCA secured guilty pleas to five (5) counts of animal cruelty and a $60,000 fine (ibid).

While the case received significant media attention and widespread condemnation, it was cited in objection to the Western Australian Animal Welfare and Legislation Amendment Bill 2020 by the Labor Party, who noted, "if anyone in this house thinks [the cruelty uncovered at HVMP] is okay, I think that is appalling. If they think that it is okay for this to go on behind closed doors, something is clearly wrong. The community expects more from us. We have an obligation to protect the animals that we use for our own food consumption, even more so than other animals. If we are using them for meat or for any other product, we have an obligation to do the right thing. Farmers should not be afraid of transparency; they should welcome it. If they have nothing to hide, there is nothing to see and nothing to fear".

Based on the information provided above, it is reasonable to conclude that the 2012 HVMP case triggered several elements of the social maturation phases detailed in Figures 1 and 3. While the industry did not dismiss the need for external regulation and publicly expressly similar concerns to those outlined above (Anon. 2012d), it is reasonable to believe the motivation for this stems from the nature and existence of the footage as evidence in a criminal case.

CASE STUDY ONE CONTINUED

Finally, this case provides a powerful example of the role whistleblowers and exposés play in securing regulatory action for animal cruelty offences, particularly under the existing animal protection framework that remains unchanged in the draft bill. (Marceau and Chen 2016). The subsequent surge in bills inspired by ag-gag legislation, intended to stifle the capacity for free speech and public debate on issues related to animal welfare in intensive farming (Bittman 2011), were partially informed by the HVMP case. The RSPCA explain, for example, that "several high profile investigations into the treatment of animals in Australian processing and production facilities [that] resulted in the filing of criminal charges, the forced closure of abattoirs, and enforcement action" were responsible for the onset of ag-gag in Australia (RSPCA Australia 2013). While the government refused to consider a requirement to install CCTV to monitor animal welfare outcomes in NSW abattoirs (Vollmer 2012), this was a recommendation contained in the Food Authority report (NSW Food Authority 2013) and was called for from multiple sources (Rosenberg and Cubby 2012; Skatssoon 2012). Similar requirements have been enacted under international law, with England requiring all slaughterhouses to be fitted with CCTV in 2018 (Kentish 2017; Smithers 2017) following a series of similar abattoir exposés (Embury-Dennis 2018). This mandatory operation requirement was supported by the British Veterinary Association ('BVA'), the UK's equivalent of the Australian Veterinary Association ('AVA'), on the basis that it can "help to make sure that legal requirements are met, and high animal welfare standards are maintained" (BVA 2022). It was similarly supported by the Farm Animal Welfare Committee ('FAWC') on the basis that it offers a "means of identifying animal welfare issues or incidents that might be missed by physical observation" (FAWC 2015).

2.3 ANIMAL WELFARE LEGISLATION AND REGULATION IN NSW

2.3.1 BACKGROUND

Contemporary accounts emphasise that the efficacy of animal protection legislation is determined by two (2) key elements: the perceived legal status of animals and the recognition of sentience (Manning et al. 2021). In addition to the projected outcomes of increasing community expectations described above, a range of weaknesses in Australia's animal protection legislation and its associated regulatory approach have been identified (White 2007; Ellis 2010; Dale and White 2013; Ellis 2013a; Morton et al. 2020).[8] These weaknesses relate to all classes and categories of animals, including companion, farmed, native and introduced (Thiriet 2007; Geysen et al. 2010; Mundt 2015; Riley 2015).

In identifying specific flaws, some reviews have focused on the presence of exemptions or defences contained within Acts that effectively "legalise considerable cruelty" in specific contexts or for specific purposes (Ellis 2010). As our response to Term 2 outlines, examples of these weaknesses can be found in the draft bill currently under consideration.[9] Other disadvantages include vagaries in wording and enforcement actions that subject the provisions of animal protection laws to interpretation by industry, courts and juries (Wolfensohn 2020; Pietrzykowski and Smilowska 2022).

While some argue that harsher sentencing for cruelty offences is necessary (Sharman 2002; Reid 2011; Markham 2013), others maintain that structural examples of bias and conflicts of interest are of paramount concern or that the current deficiencies require the establishment of a robust national framework (Thiriet 2007; Ellis 2010; Cao 2015; Giuffre and Margo 2015; Ford 2016). Others still have identified the current property status of most animals as the underlying problem from which many others arise (Gregory 1994; Francione 1995; Bryant 2008; Favre 2010; White 2016a). We have shown that this has been a primary concern of animal law.

Animal Liberation has discerned many of these weaknesses in the NSW animal welfare framework in various degrees and contexts. While these will be further elucidated in relevant subsections below, we note that when each of these issues is synthesised, the cumulative weaknesses of existing and proposed legislation create a gap between the goals of enforcement and the practicalities provided for under the framework (Morton et al. 2020).[10] On this basis, it is reasonable to conclude that the current reform process has failed to demonstrate how the draft bill will rectify these flaws and the underlying community expectations for a robust animal protection framework.

2.3.2 WEAKNESSES AND INCONSISTENCIES IN THE NSW FRAMEWORK

There is consensus that the current animal welfare framework in NSW is outdated, largely ineffective, and fails to abide by its spirit or meet its stated purpose and objectives. This conclusion is implicitly recognised by the NSW Government,

8 Many of these criticisms have been expressed elsewhere in the Western world, indicating that the perceived problems are more generalised and widespread than the Australian experience (Wolfson and Sullivan 2004).

9 See, for instance, sections 29, 30 and 32 of the draft bill.

10 Such a discrepancy has been previously acknowledged and defined as an "enforcement gap", particularly in environmental law (Lo et al. 2006; Lo et al. 2012). The concept of an "enforcement gap" seeks to explain why many laws fail (Morton et al. 2020).

whose publications released at various stages of the current reform process acknowledged the need for modernising the state's animal protection framework, and is further reflected in the number of public responses to consultation periods of this reform process (DPI n.d.-a; DPI n.d.-b; Marshall n.d.; DPI 2020; DPI 2021a; DPI 2021b).

These failures, however, have been evident for many years (Boom and Ellis 2010). In this regard, the current reform process and the prior consultation undertaken by the NSW government is strikingly similar to similar developments in other jurisdictions. Other state and territory government departments have either conducted analogous reviews or initiated reforms of their corresponding legislation. For example, similar processes have recently been undertaken in Victoria (DJPR 2020a; DJPR 2020b), Queensland (DAF 2021a), Tasmania (Barnett 2021) and Western Australia (DPIRD 2021). Though the specific policy changes, proposals or amendments contained within these reforms may differ from those codified in the draft bill, each was informed by a general acknowledgement that their respective animal protection frameworks required updating (DPIRD 2020; Furner 2020) strengthening (Augustine 2021; Barnett 2021) or modernisation (Andrews 2021; MacTiernan 2021). The latter has been common across many jurisdictions as animal protection laws have been in place for several decades (Johnston 2020; AgForce 2021; DJPR 2021a). The current reform process constitutes a similar attempt to modernise animal welfare legislation in accordance with both current animal welfare science and contemporary community expectations (Morten et al. 2020; DPI n.d.-a; DPI n.d.-b; DPI 2020a; DPI 2020b). However, our responses to the TOR will demonstrate that this commitment has not been met.

The following subsections will outline several structural issues within the existing NSW animal welfare framework that we will show are replicated in the draft bill's provisions.

2.3.3 STRUCTURAL ISSUES WITH THE REGULATORY AND ENFORCEMENT REGIME

The following subsections will demonstrate that the overwhelming majority of other-than-human animals are oppressed on an unfathomable and immeasurable scale (Shooster 2015). In line with the available evidence, Animal Liberation has identified four (4) major impediments to enforcing animal welfare law (Sunstein 2004b; Russell 2017).[11]

First, enforcement may only occur through public prosecution through authorised charitable organisations ('ACOs') that have the legislated capacity to prosecute animal welfare offences. However, it can be challenging to secure such prosecutions, even when the animal(s) at issue are companion animals and the alleged violations are clear (Rackstraw 2003; Ellison 2009; Morton et al. 2018). Due to these structural flaws in the system, some have argued that the enforcement of animal welfare laws in Australia "implicitly rely upon unlawful acts of trespass" (Russell 2017).[12] We have demonstrated that many of the exposés that

11 Though these are primarily made in the context of the United States animal welfare laws (Sunstein 2004b), Australian studies have identified these as relevant to Australian jurisdictions (Russell 2017).

12 As such, an account of the relationship between animal welfare legislation and other laws that prohibit trespass is vital to a critical assessment of how such laws continue to permit cruelty. Therefore, it is reasonable to maintain that the inadequate powers currently held by ACOs under POCTAA necessitate a dependence upon private animal cruelty investigators who unlawfully trespass to obtain evidence of cruelty (Russell 2017). This is amplified by the evidence outlined elsewhere in this submission relating to the low propensity of employees in production industries to report animal cruelty cases (Taylor and Signal 2006a).

these activities generate are responsible for significant policy changes that otherwise would not have occurred. In addition, there are strong arguments in support of the conclusion that humans have "a moral duty to intervene to prevent or mitigate the suffering" of other animals (Johnson 2017), even in instances when existing provisions of animal protection legislation do not (Arbon and Duncalfe 2014).

Second, duties to animals generally only apply when a distinctive ownership relationship exists (i.e., duties tend to only exist for persons whose ownership status mandates minimum standards of care) (Barnett and Gans 2022). Similarly, there is no mandatory reporting duty applicable to observing cruelty to animals (Acutt et al. 2015).[13] Australian studies have found that people employed within animal-use industries often have the lowest propensity to report animal abuse and that those who do intend to report do not know to whom they should do so (Taylor and Signal 2006a). The RSPCA note that some citizens are "reluctant to report animal cruelty for fear of reprisals" and that such concerns are pronounced if they have personal or professional ties with those engaging in the allegedly illegal activity (RSPCA Australia 2014a).[14] A good indication of this in an employee context is visa workers' fears about poor working conditions in NSW poultry slaughterhouses (Peacock 2015). As a result, such whistleblowers may resort to reporting allegations of animal cruelty to independent APOs, who may then act on their behalf. An example of the latter is Animal Liberation's anonymous, free-call animal cruelty hotline.

The conclusions outlined above are supported by other findings indicating that the low propensity to report animal cruelty is related to a strong utilitarian view held by industry employees (Kellert 1980). We have shown that this attitude is markedly different from those held by most Australians (Futureye 2018; McGreevy et al. 2019). That is, employees often exhibit greater levels of concern for an animal's practical or material value, not their welfare (Morton et al. 2020). While this is at odds with contemporary community perspectives (Te Velde et al. 2002; Spooner et al. 2014; Futureye 2018; McGreevy et al. 2019; van de Weerd and Ison 2019), this can be due to different attitudes towards animals related to their experiences during their employment with the industry (Taylor and Signal 2006b; Taylor and Signal 2009b). In addition, individuals in rural populations may be less likely to report cruelty because farmed animal ownership is "comparatively more 'hidden' than companion animal ownership" (i.e., in intensive facilities such as piggeries or poultry farms) (Morton et al. 2020).[15] In this way, the design and structure of intensive animal agriculture operations influence underreporting of offences under animal protection legislation.

Third, many of the most fundamental provisions of animal protection legislation do not apply to the vast majority of animals (Sunstein 2004b). This includes those used for medical, scientific, or food production purposes. While the exemptions that facilitate this will be further discussed in relevant sections of this submission below, it is important to note that when these exemptions are considered in conjunction with the resourcing limitations placed on ACOs under POCTAA, a

13 Mandatory reporting refers to a legislated requirement of a person or persons with responsibility for the care of animals to report incidents of cruelty to relevant authorities. Though the RSPCA maintains that mandatory reporting should be introduced "for all persons in such positions of responsibility and who, by virtue of their role, are expected to have an understanding of animal welfare legislation" (RSPCA Australia 2014b), no such requirement currently exists despite recommendations for doing so. For example, a Task Force set up by the NSW Minister of Police in 2005 recommended that "veterinarians should be encouraged as part of their ethical responsibility to report all suspected cases of animal cruelty" (Ministry for Police 2005). Similar requirements exist elsewhere for licensed medical professionals in the United States (Dunn 2016) and for veterinarians in New Zealand (Lawrie 2005).

14 Similar concerns have been noted in other jurisdictions (HSVMA n.d.-a; HRW 2004) and are also strongly associated with domestic violence (Kellert and Felthous 1985; Gullone 2016; Coorey and Coorey-Ewings 2018).

15 While some sources have cite rural regions as comparatively more accepting of animal cruelty as a "normal" or "natural" way of life (Linzey 2009), this has not been Animal Liberation's general experience. Though this may be apparent in certain circumstances (Mehmet and Simmons 2018), we note that our conclusion that concern for animal cruelty is a near-universal experience is supported by recent findings from surveys commissioned by the Commonwealth (Futureye 2018).

minimal number of operations are subject to routine inspections (Morton et al. 2020). As we have previously noted, though the number of routine inspections RSPCA NSW reported conducting in 2019-20 had risen from its 2018-19 figures of 93 to 139 (RSPCA Australia 2019a; RSPCA Australia 2020b), this remains an exceedingly small percentage of all auditable operations across the state.[16] The RSPCA's 2018-19 annual report explains, for instance, that the following are examples of establishments that may be routinely inspected: "abattoirs, aquariums, breeding establishments, circuses, feedlots, guard dog firms, hobby farms, intensive farms, kennels, livestock vessels, markets, pet shops, poultry farms, pounds, riding schools, rodeos, saleyards, scientific establishments, shelters, shows, tourist parks and zoos" (RSPCA Australia 2019a).[17]

If the average production figure of a single modern poultry farm exceeds 1,300,000 birds each year [18] (Scott et al. 2018; ACMF 2020a) and NSW is responsible for producing approximately one-third of the 678 million meat chickens slaughtered in Australia per annum (Food Authority n.d.; ACMF 2020b), 139 inspections shared amongst all the establishments described above means that the welfare of the overwhelming majority of animals in NSW is effectively only ever overseen by those whose primary motivation is to profit from their production. We have shown elsewhere in this submission that reporting by industry participants is minimal (Taylor and Signal 2006a).[19] Meanwhile, veterinary visits to Australian chicken farms can be exceedingly rare and as low as once annually (Scott et al. 2018).[20] On this basis, it is reasonable to conclude that the present regulatory framework is estranged from contemporary public expectations: of the 71% of Australians who regard farm animal welfare to be of concern, the majority identify poultry welfare as their primary concern (Coleman et al. 2018). Furthermore, the NSW RSPCA (the primary ACO under POCTAA) has approximately 30 inspectors (RSPCA NSW 2022a). As it applies to inspections, our response to the Discussion Paper questioned the appropriateness of this enforcement approach (AL 2021: 24). Others have similarly noted that "there is no other branch of criminal law that relies so heavily on charity to ensure the enforcement of what is essentially a public interest law" (Morton et al. 2020).[21]

The fourth, and perhaps the most substantial impediment, is structural conflicts of interest in regulating and enforcing animal welfare this arrangement facilitates (Thiriet 2007; Ellis 2010; Cao 2015; Giuffre and Margo 2015; Ford 2016; NSWYL 2018). These relate to actual, perceived or potential conflicts of interest between the investigation and enforcement of the framework (NSW Parliament 2020b). Though this concern is often associated with the contradictory regulatory relationship between state agricultural departments that promote economic interests while also regulating them to serve public interests (Goodfellow 2016; Morton et al. 2020), conflicts of interest can also relate to the commercial activities of ACOs. Each of these, however, can cause "a very narrow concept of

16 Though three (3) organisations are authorised enforcement agencies under POCTAA (DPI 2019), the RSPCA inspectorate is the largest in the state (RSPCA NSW 2022b) it is widely regarded as the primary regulatory authority. In its 2018-19 Annual Report, for example, the Animal Welfare League ('AWL') stated that all of the 955 complaints received were classified as "omissions" (i.e., neglect) rather than "commissions" (i.e., abuse) (AWL NSW 2019).

17 All cited establishments remain in the most recent RSPCA Australia report with the exception of "hobby farms" which has been removed (RSPCA Australia 2020b).

18 Though the 1,300,000 figure is provided by the chicken meat industry's peak body (ACMF), large companies can produce substantially more birds per year. For example, large sheds can confine up to 60,000 birds each (Poultry Hub Australia 2022a), and some farms have up to 32 sheds (ProTen 2022). ProTen, for example, cite their annual production capacity at an estimated 133 million per year (ibid).

19 See subsection 2.3 of this submission.

20 In this time, a farm comprising six (6) sheds housing up to 240,000 chickens can produce a total exceeding 1,300,000 birds a year across an average of 5.5 production cycles (Scott et al. 2018; ACMF 2020a). Producers are paid approximately 60 to 80 cents for each chicken (Burt 2020).

21 While government departments elsewhere in the world utilise databases developed by ACOs (Whitfort et al. 2021), no other branch of criminal law is so functionally dependent on charity to exercise the enforcement of a public interest law (Nurse 2016; Morton et al. 2020). See also Boom and Ellis (2009), Ellis (2010), Hughes and Lawson (2011), Cao (2015) and Nurse 2016).

animal welfare [to be] applied" (Ford 2016).[22]

A. CONFLICTS OF INTEREST AND ENFORCEMENT

While the limited capacity to engage in routine inspections stems, in large part, from tasking a charity with the regulation of criminal law and failing to provide it with adequate resourcing to do so (Boom and Ellis 2009), compliance measures are undertaken by the RSPCA in relation to its accreditation scheme reveal further contributing factors.[23] These were identified in New South Wales's Legislative Council Select Committee on Animal Cruelty Laws (NSW Parliament 2020b).

To demonstrate this, we will briefly discuss the chicken meat sector. While approximately 200 independent poultry meat farms contracted in NSW (Burt 2020), at least 70% of all chicken meat production operations have RSPCA Approved accreditation (ACGC 2022). The RSPCA's Approved Farming Scheme ('AFS') has over 500 participating farms that provide 36 brands with over 1,000 products (RSPCA Australia 2021b). This accreditation scheme, launched in 1996 (RSPCA Australia 2019b), claims to produce "higher welfare products" (RSPCA Australia n.d.).[24] In a paid article that recently appeared in the Guardian, the RSPCA maintained that the organisation "acknowledges that not consuming animal-derived products is one way for consumers to demonstrate they care about farm-animal welfare" (Anon. 2022). Under this scheme, however, the welfare of an enormous number of animals is overseen by the RSPCA's standards. In 2020, for example, 579 million chickens were farmed under the RSPCA scheme and its standards (RSPCA Australia 2020b). Though accredited farms are inspected two (2) to four (4) times a year (RSPCA Australia 2021c), the sheer scale of these operations has led some to conclude that the scheme established a marketing arm of the RSPCA that was developed in response to increasing community concerns about farmed animal welfare (Parker et al. 2018).[25] Thus, the RSPCA's development and use of standards that facilitate the continuation of intensive animal agriculture while making minor improvements to those produced by the government and industry continue to fail animals. While the RSPCA has explained that the scheme is a not for profit program, with "royalty payments received from companies marketing their products as RSPCA Approved" used further to fund its operations (RSPCA Australia 2017a), its direct involvement can be construed as a conflict of interest produced by its legislated role in the regulatory framework. Indeed, some have questioned whether this system is "set up to necessitate poor enforcement" (Russell 2017).

B. WEAKNESSES IN REPORTING PROCESSES

22 The current arrangement whereby the enforcement and regulation of animal protection legislation are undertaken primarily by Australian state and territory RSPCAs, which are also involved in advocacy campaigns for animal-related issues, as per the organizations' objective "to educate the community with regard to the humane treatment of animals", can generate conflict between ACOs and industry or special interest groups. These will be further detailed elsewhere in this subsection.

23 As we have demonstrated, most animal protection statutes' overarching ambition is to prevent cruelty by promoting their welfare. This is often replicated in the guiding principles of ACOs. For example, RSPCA Australia's mission is "to prevent cruelty to animals by actively promoting their care and protection" (RSPCA Australia 2022a). Because the RSPCA promotes the concept of 'welfare' as maintaining the Five Freedoms (RSPCA Australia 2019b) and it has been suggested that animal protection legislation in Australia is underpinned by these principles (Dale and White 2013), some have maintained that this suggests that there is no conflict of interest between legislative objectives and the RSPCA's core values (Morton et al. 2020).

24 The concept of "higher welfare" in intensive agricultural industries is a primary example of the structural differences between the welfarist and abolitionist approaches described in section 2.

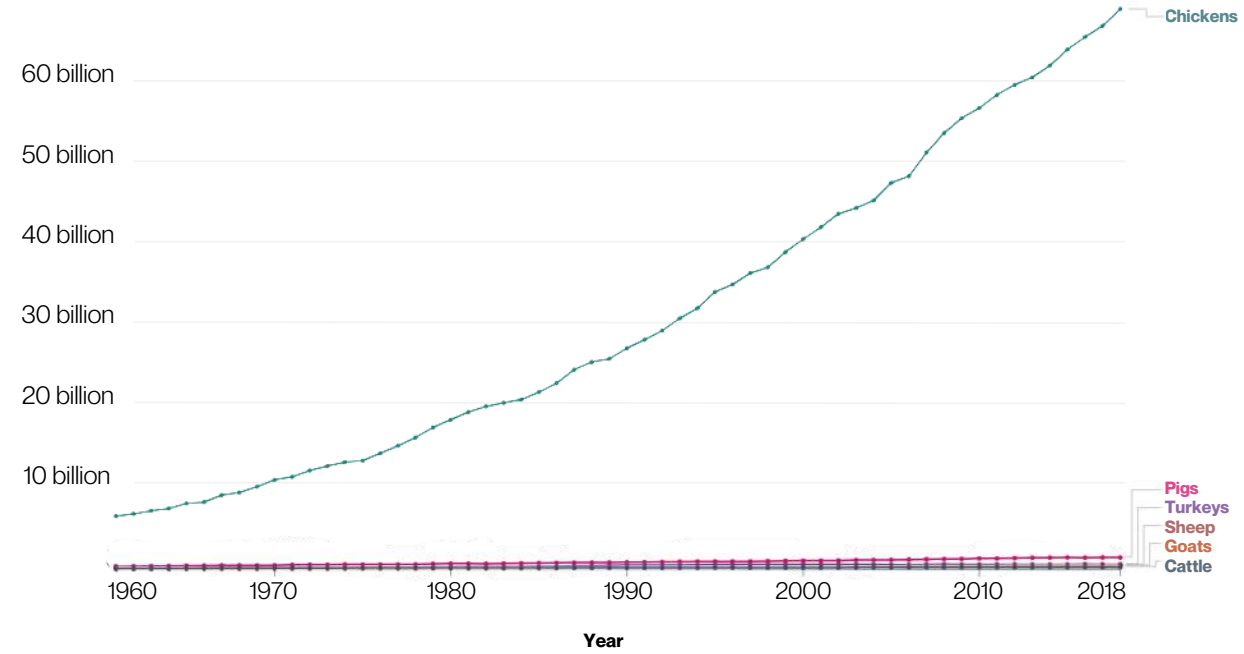
25 That is, when the onset of the scheme in 1996 (Manning et al. 2021) is mapped to the trajectory of the societal expectations detailed in Figure 1, it is reasonable to conclude that its establishment coincided with the emergence of the "challenge" phase of societal expectations relative to animal welfare, wherein "regulatory systems and constitutive relationships come under public scrutiny" (Futureye 2018: 6).

The low propensity to report animal cruelty outlined above has several important implications. A key factor relates to the often secluded and geographically dispersed nature of the animal agriculture sector,[26] making evidence harder to secure and cases more expensive to prosecute (Ellison 2009). The sheer number of animals involved compounds this. As powerfully expressed by Rollin (2006), "there is no question that animal agriculture as practised in Western industrialised countries today is responsible for far more animal suffering than all other uses of animals combined". Others have since equated the industrial production of animals for human consumption with "one of the worst crimes in history" (Harari 2015).

Consider, for example, the annual rates of farmed animal slaughter detailed in Figures 4, 5 and 6. In many cases, the scale of chicken production is so substantial that graphs cannot remain comprehensive if they quantify their numbers in the same manner as other sectors (i.e., as individual animals) (FAO 2020b). For example, while nearly 1.5 billion pigs are killed annually worldwide (Ritchie and Roser 2019), Figure 5 uses a single unit representative of 1,000 individuals for the chicken meat sector (Sanders 2020). The projected increase in flock sizes detailed in Figure 7 foreshadows the expected scale of Australian chicken meat production operations.

Fig. 4: Number of animals slaughtered for meat globally (1961-2018)*

* SOURCE: ADAPTED FROM FAO (2020a)



26 This is increasingly generating significant land-use conflicts. As AgriFutures Australia note, intensive animal agriculture operations are often "greeted with community distaste" due to the adverse impacts they cause communities (Cosby and Howard 2019). In 2015, concerns about land use conflict triggered the development of the NSW Right to Farm Policy, which states that a right to farm ('RTF') is "a desire by farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users" (DPI 2015; NSW Farmers' Association n.d.). Elsewhere, this has been described as a "social license to farm" (Coleman 2018). As the previous subsection demonstrated, projections detailed in the Commonwealth-commissioned study suggest that protecting the status quo will become "a minority view" as Australian citizens progress further on the upward trajectory detailed in Figures 1 and 2 (Futureye 2018: 26). This could mean, for example, that the reference to "lawful" practices under the definition of a RTF under existing NSW policy will lose their social license. In the next phase of community engagement with issues of animal welfare, for example, the report states that the norming processes underway today "typically lead to threats of sanctions against those breaching new norms, regardless of whether their actions are legal or not" (Futureye 2018: 25).

Fig. 5: Number of animals slaughtered each year globally (1961-2018)*

* SOURCE: ADAPTED FROM SANDERS (2020)

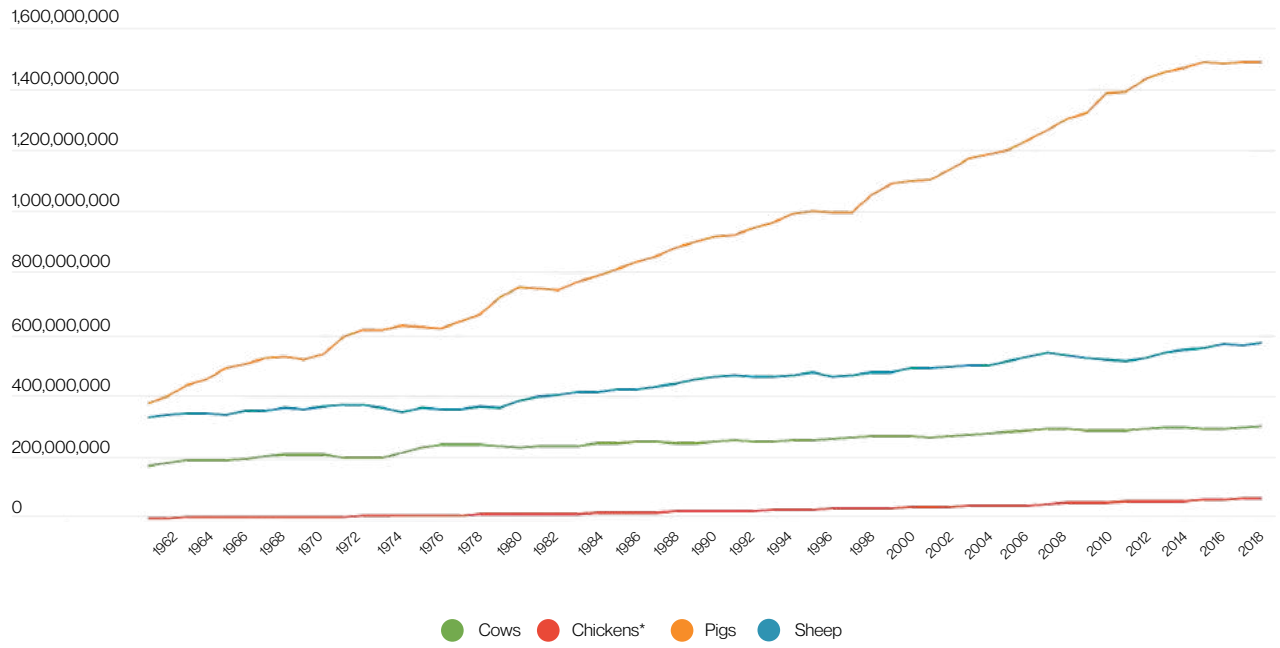


Fig. 6: Number of animals slaughtered for meat in Australia (1961-2018)*

* SOURCE: ADAPTED FROM FAO (2020a)

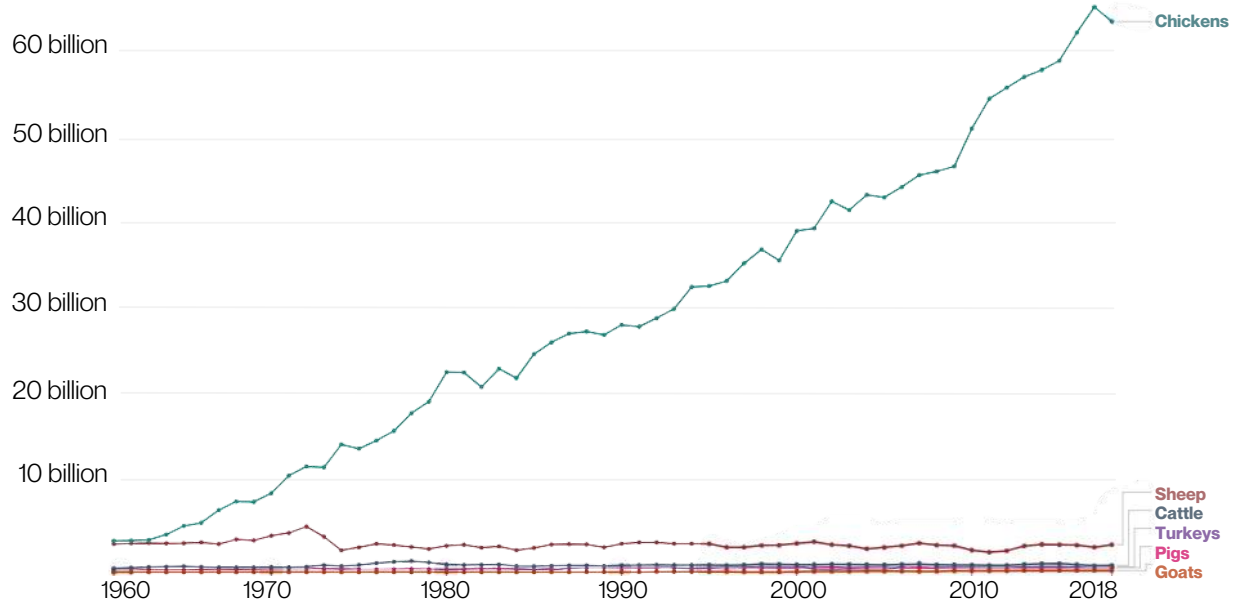
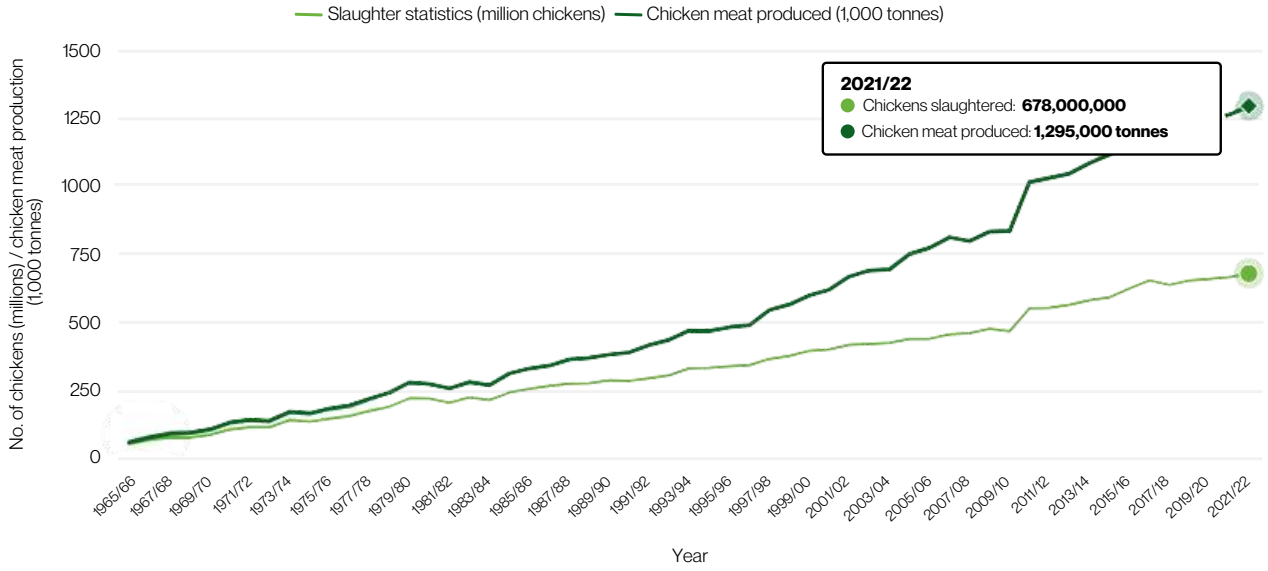


Fig. 7: Annual and projected slaughter rates of chickens in Australia (1965-2022)*

* SOURCE: ADAPTED FROM ACMF (2020b)



Though estimates suggest that the total figure of animals killed for human consumption exceeds 3,000 animals per second in global slaughterhouses (Gullone 2017), such statistics do not include animals who do not survive the conditions within intensive facilities or the impacts of their genetic engineering long enough to be slaughtered and sold at market (Thornton 2019). This includes male chicks and unproductive hens killed in egg production: each year, up to 23 million male chicks deemed useless to the Australian egg industry are killed by maceration or gassing by carbon dioxide (RSPCA Australia 2020a; RSPCA Australia 2021d). Though welfare concerns regarding maceration (i.e., the live liquefaction of neonatal chickens) in the egg industry have generated significant public pressure to develop alternatives and outlaw its practice (Gurung et al. 2018), these concerns are yet to create explicit policy in Australia.[27]

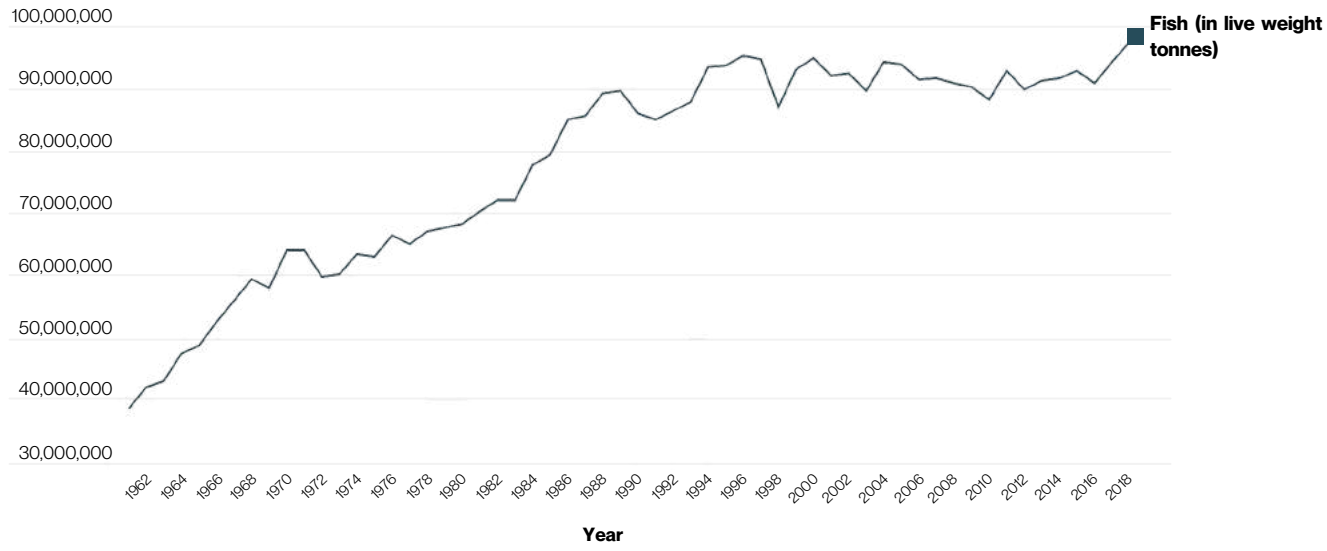
In the chicken meat sector, the industry explains that it is "normal" for "a continuous low level of mortality and a small number of unthrifty birds in the poultry flock" to die before reaching slaughter weight (Poultry Hub Australia 2022b). The Australian Chicken Meat Federation ('ACMF'), the peak body for the sector, acknowledges that an estimated 4% of chickens die before they reach slaughter weight (ACMF 2020c). Though some datasets provide indicators of annual production only in terms of tonnes produced (AgriFutures 2020), extrapolating figures from the estimated yearly slaughter rate of 678 million birds provided by industry produces a staggering total of over 28 million who either die before reaching slaughter weight or are otherwise killed on-farm (ACMF 2020b). As hens confined on egg farms are replaced approximately every 16 to 18 months (FAO 2003; Moss 2019; RSPCA Australia 2022b), the figure of animals killed to produce eggs runs into the many millions. However, due to the scale of deaths that this practice generates, there is no structured attempt to calculate such figures.

27 This is in contrast to other nations who have either approved draft laws to prohibit the practice (AFP 2020; AFP 2021) or commitments to do so (Brice-Saddler 2020).

The problem of an impossibly immense scale is amplified in relation to fish and other sea animals, whose deaths are in such astronomical sums that they are only measured in tonnes (Sanders 2020; OECD 2022). This is detailed in Figures 8 and 9, with the devastating impact of such vast operations illustrated in Figure 10 (FAO 2020b).[28] In an undated report published by the Food and Agriculture Organisation ('FAO') of the United Nations, while 52% of fisheries were catalogued as "fully exploited", only 3% were classified as "underexploited", and 1% were "recovering from depletion" (FAO n.d.). By 2018, the Secretary-General of the United Nations Conference on Trade and Development ('UNCTAD') and Special Envoy for the Ocean released a statement indicating that 90% of "fish stocks are used up" (UNCTAD 2018).

Fig. 8: Global slaughter rates: fish (1961-2018)*

* SOURCE: ADAPTED FROM SANDERS (2020)



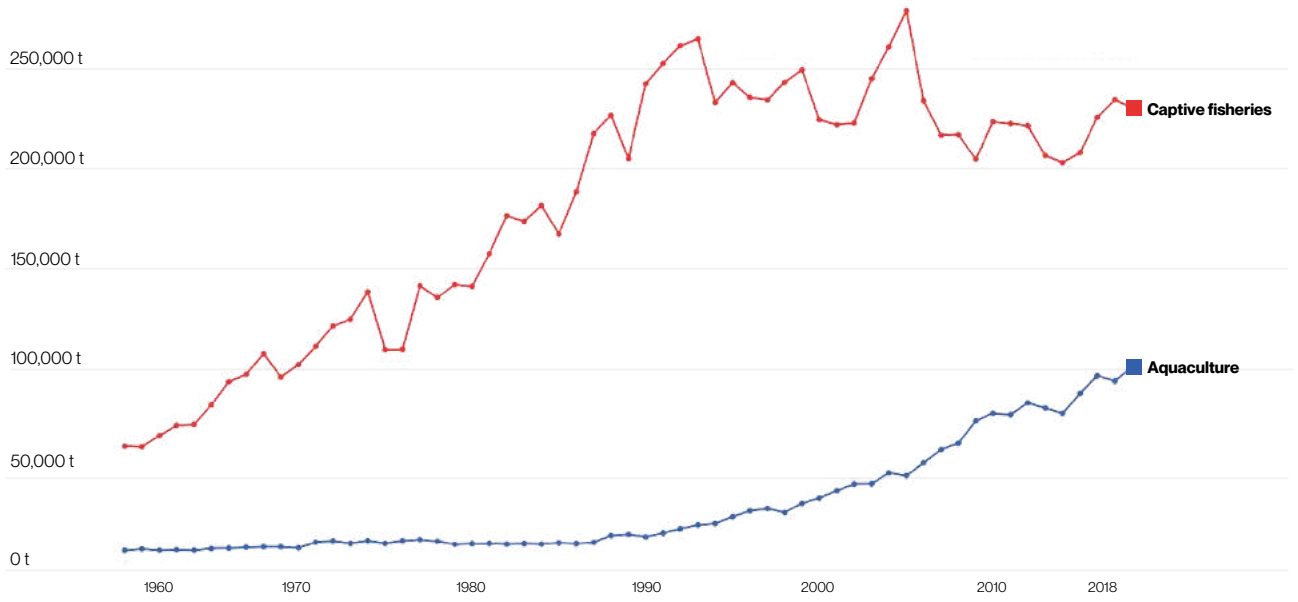
While the World Economic Forum ('WEF') estimated in 2016 that 150 million tonnes of sea creatures were killed for human consumption (Thornton 2019), factory-farmed fish, pigs and poultry consume up to one-third of all wild-caught fish per year (Zabarenko 2008; Carrington 2018). Meanwhile, millions of tonnes of wild fish are killed each year to produce fishmeal and fish oil ('FMFO') - key ingredients of farmed fish feeds (Sarker 2020; Huon Aquaculture 2021) - thereby threatening food security and risking the further collapse of imperilled marine ecosystems (CIWF 2019). Because up to 90% of wild-caught fish are fit for human consumption (Cashion et al. 2017), the FAO notes that the world's poor are effectively bypassed in order to feed farmed animals (Wijkström 2009) and compounds existing inefficiencies (Shepon et al. 2018). While the push to produce more food from existing or improved agricultural systems is a major feature of the

28 In addition to the sobering figures detailed in Figures 8 and 9, these statistics do not account for annual by-catch (i.e., non-target marine life mortalities) (OECD 1997; DAFF 1999). Though this process is described by the Australian Fisheries Management Authority ('AFMA') as "incidental" (i.e., a minor element occurring alongside something else) (AFMA n.d.), by-catch is an innate feature of modern operations (WWF 2022) and widely regarded as a serious threat to the viability of many marine ecosystems (Komoroske and Lewison 2015). Further to the environmental issues inherent in the aquaculture sector (Cullen-knox et al. 2020), Australia's role in by-catch is substantial. While the FAO has previously estimated that Australia's commercial fisheries discarded over 55% of its catch (Kelleher 2005), the nation's first national by-catch report cited the lower figure of 37% in the past decade (Kennelly 2020).

food security narrative (Guillou and Matheron 2014), current production provides enough food to support the global human population (FAO 2011; Hiç et al. 2016). The fish used to feed salmon are often sourced from regions suffering significant food insecurity with the salmon subsequently sold to customers in high-income nations (Harvey 2021a; Gayle 2022). Predicted population growth and its connection with an increase in animal consumption can be reasonably expected to amplify these rates (Bruinsma 2011; Alexandratros and Bruinsma 2012). As these fish are increasingly fed to terrestrially farmed animals, it is also reasonable to conclude that the growing demand for animal products will cause greater land clearing rates and the adverse ecological impacts this generates (Godfray et al. 2010; McDougall et al. 2018).

Fig. 9: Seafood production in Australia: wild caught vs. aquaculture (1960-2018)*

* SOURCE: ADAPTED FROM FAO (2020b)



In sum, this section has demonstrated several key considerations that the NSW Government must address to secure a modern and robust animal welfare framework in NSW. The complications caused by the sheer scale of current production rates, which we have outlined above, may predispose enforcement agencies to regard animal cruelty cases as relatively high-risk (Ellison 2009). We note that this is a concern held by ACOs, such as the RSPCA, who are keenly aware of their position as private organisations with "police-like functions" (Chen 2016). That is, they are implicitly encouraged by their position within the legislative framework to act cautiously in the use of their coercive powers due to concerns that they may lose these if they apply them too strenuously (ibid).[29]

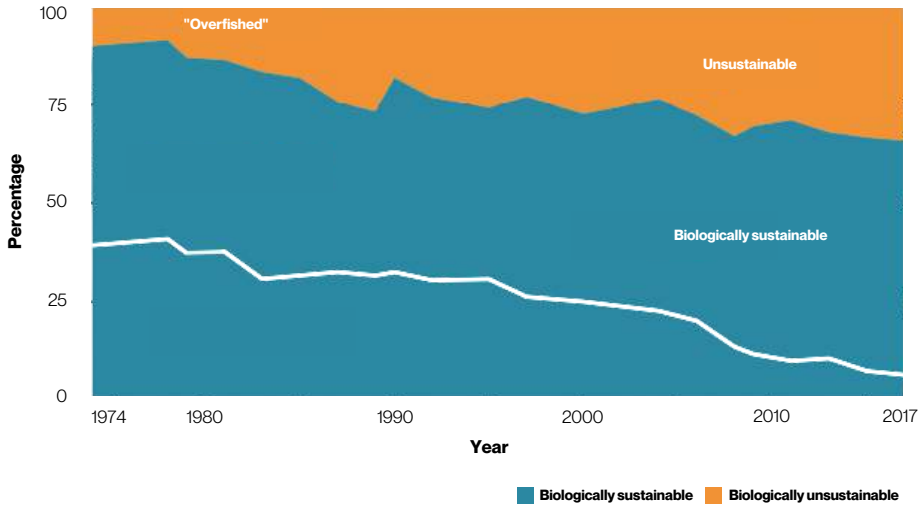
Similarly, this section has demonstrated that the greatest numbers of animals to

29 Consider, for example, recent allegations by peak industry bodies that the Western Australia RSPCA is "seriously conflicted" because they are perceived to "play the role of a political activist organisation" by "lobbying against various forms of commercial animal production […] while also acting as the industry police officer" (WA Farmers 2020). These allegations are familiar and have been expressed in various contexts for some time. Some have claimed that the RSPCA oversteps its remit when exercising its authorised functions in relation to farmed animals (O'Connor 2015). Similar allegations of "radicalisation" have been levelled against other state ACOs, including during Victoria's inquiry into its RSPCA (see submission 78, for example) and in response to its public stance on specific policy decisions (Devine 2016). Other interests have issued veiled warnings to suggest that a strict approach in relation to issues important to their constituents would be met unfavourably (ADA 2021).

whom this inquiry relates to are those bred and killed for human consumption. Millions of animals are bred for food in intensive operations every year in Australia alone (Sharman 2009). Many more are exploited for their skins and fibres or entertainment or experimentation purposes (Gullone 2017). An untold number of wild animals suffer lethal control across the state each year (Thiriet 2007). Animal Liberation contends that enormous numbers of animals rely on their welfare and wellbeing needs being met by a disparate network of authorities and interests. These include various levels of state government, including state departments, agencies, local government councils and self-regulated industries (e.g., the horse and greyhound racing industries). Those involved in animal agriculture, including intensive and industrial-scale animal agriculture, also contribute to this reliance.

Fig. 9: Global trends in the state of the world's fisheries (1974-2017) *

* SOURCE: ADAPTED FROM FAO (2020b)



Regarding the regulation and enforcement of animal protection legislation in NSW, inconsistencies and a demonstrated willingness to allow various forms and types of self-regulation. These are often to the benefit of vested interests and detriment of animal welfare outcomes, Animal Liberation suggests that in addition to the Minister for Agriculture and Western New South Wales, which encompasses animal welfare, the responsibility for broad animal welfare is scattered across the NSW government portfolios of Racing, Local Government and Environment. While this scattered, piecemeal and inconsistent approach continues, thousands of animals will continue to fall through the cracks, and perpetrators of animal cruelty and neglect will not be held to account.

C. INCONSISTENCIES AND CONCERNS ASSOCIATED WITH SELF-REGULATION AND THE APPLICATION OF STATE LAW

Animal Liberation considers the scope of industries whose activities threaten animal welfare, including neglect and cruelty, to be an industrial-scale dilemma in urgent need of immediate oversight and reform. We have demonstrated this in the previous subsection. Local government council pounds and council-managed saleyards clearly illustrate this observation. Our strong view is that animal

protection legislation must apply equally and consistently, without bias or conflict, in all cases where potential animal suffering or cruelty can and frequently does occur. The origins of animal suffering and cruelty, or the basis and responsibility for oversight, should not be a determining factor that modifies the application of laws ostensibly enacted to protect animals and prevent cruelty. Instead, these laws must be consistent and equitably applied.

Animal Liberation notes, with significant concern, the NSW Government's propensity to establish or strengthen self-regulating bodies in response to public concerns following exposed incidents of animal cruelty that have emanated from particular industries or activities. Such an approach reinforces widespread public concerns about the differential and unfair treatment of animals according to who you are, the perceived economic value of an animal or animals or the perpetrator's relationship with the government. Under the guise of self-regulation, we also note that NSW Local Government Councils' are self-governing, even to the extent of their ongoing oversight with harmful Development Applications ('DAs'), they themselves assess and approve, where there is an immediate risk and impact to the welfare and well being of animals.

Based on the information we have provided, we maintain that the draft bill fails to offer any clarity or sensible solution to these serious and ongoing dilemmas. As such, we do not consider it random or coincidental that most Australians remain unaware of the varying welfare standards applicable to companion animals compared to farmed animals (Gullone 2017). As it is legally acceptable for financial interests to override animal welfare considerations, and the department responsible for promoting the profitability of industry is also tasked with overseeing its regulation (NSWYL 2018), governments have facilitated and officially approved of the practices used in intensive farming precisely by not legislating against their commission (Adams 2009).

Similarly, we do not consider it unintended that other legislation does not adequately address welfare impacts associated with activities regulated by their provisions. In this context, we consider the categorical lack of NSW planning consistency as it applies to developments that impact and pose potential adverse impacts on animals, their welfare and wellbeing to be wholly improper and contrary to the spirit of the state's animal protection framework. For instance, the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and the *Environmental Planning and Assessment Regulation 2000* ('EP&A Regulation') have been designed solely for development and human ease of use. As such, they continue to fail to provide guidance or protection for a wide range of animals used and exploited in intensive and industrial-scale animal agriculture ventures, including dogs and cats in puppy and kitten factories which fail to even rate a mention under Schedule 3 of the Regulations as they apply to designated development and intensive livestock agriculture.

On this basis, Animal Liberation strongly contends that self-regulation is a highly inappropriate and conflicted approach to the administration and management of animal welfare. We maintain that this is especially so when the platform is founded on weak, outdated and inadequate laws, as demonstrated above. Animal welfare self-regulation frequently leads to inconsistency and varying degrees of inequality for the animals we should protect. Industry exemptions and loopholes only exacerbate these important considerations.

2.3.3 CONCLUSION

This section has provided a broad overview of the scale of farmed animal production and has provided the Committee with the necessary context to approach the draft bill. Previous sections have demonstrated that the contents and application of animal protection laws are inherently inconsistent with their stated objectives (i.e., to protect animals from harm) (O'Sullivan 2009). The following section, containing our responses to the draft bill as per Term 2 provided by the Committee, will challenge structural inconsistencies in the NSW Government's proposed reforms to POCTAA.

Finally, our response to the draft bill, provided below, will show that both the existing and proposed regulatory approach is deficient in several respects. First, though the adoption of generalised anti-cruelty provisions and a duty of care appear to provide adequate protections, entire categories of animals remain exempt from these provisions. Second, even where such provisions remain applicable, they are not robustly or rigorously enforced (Caulfield 2008a). The capacity of government departments and ACOs empowered under law to enforce the draft bill's provisions is also unacceptably influenced by conflicts of interest. Finally, the provisions ultimately fail to mandate practical measures to ensure that animals will be provided with the requisite care to enjoy a good life worth living (White 2007; FAWC 2009; Heikkila 2018). Like the original animal protection statute that served as the introduction to this section, our responses to the TOR will show that our conclusions are borne not of sentimentalism, though they may be informed by compassion, but of good sense and sound science.

CASE STUDY TWO:
HORSES AND CANINES USED FOR ENTERTAINMENT PURPOSES

SOURCE: JO-ANNE McARTHUR / WEANIMALS

The species *Canis lupus familiaris* comprises all canines, including companion animals with almost 50% of Australians share their lives and homes with (AMA 2019), as well as greyhounds, working dogs, hunting dogs, those intensively housed in puppy factories, held in pounds and shelters, in laboratories and medical research facilities, and those used in animal circuses. Animal Liberation, and indeed the broad public, hold the practical view that "a dog is a dog is a dog" who all with the same capacity to suffer, feel pain and joy (i.e., they are sentient) (Makowska and Weary 2013; Vonk 2018; Kotzmann 2020a). And yet, amongst this same species, current laws accommodate and allow significant variation in degrees of equality in their protection against cruelty.

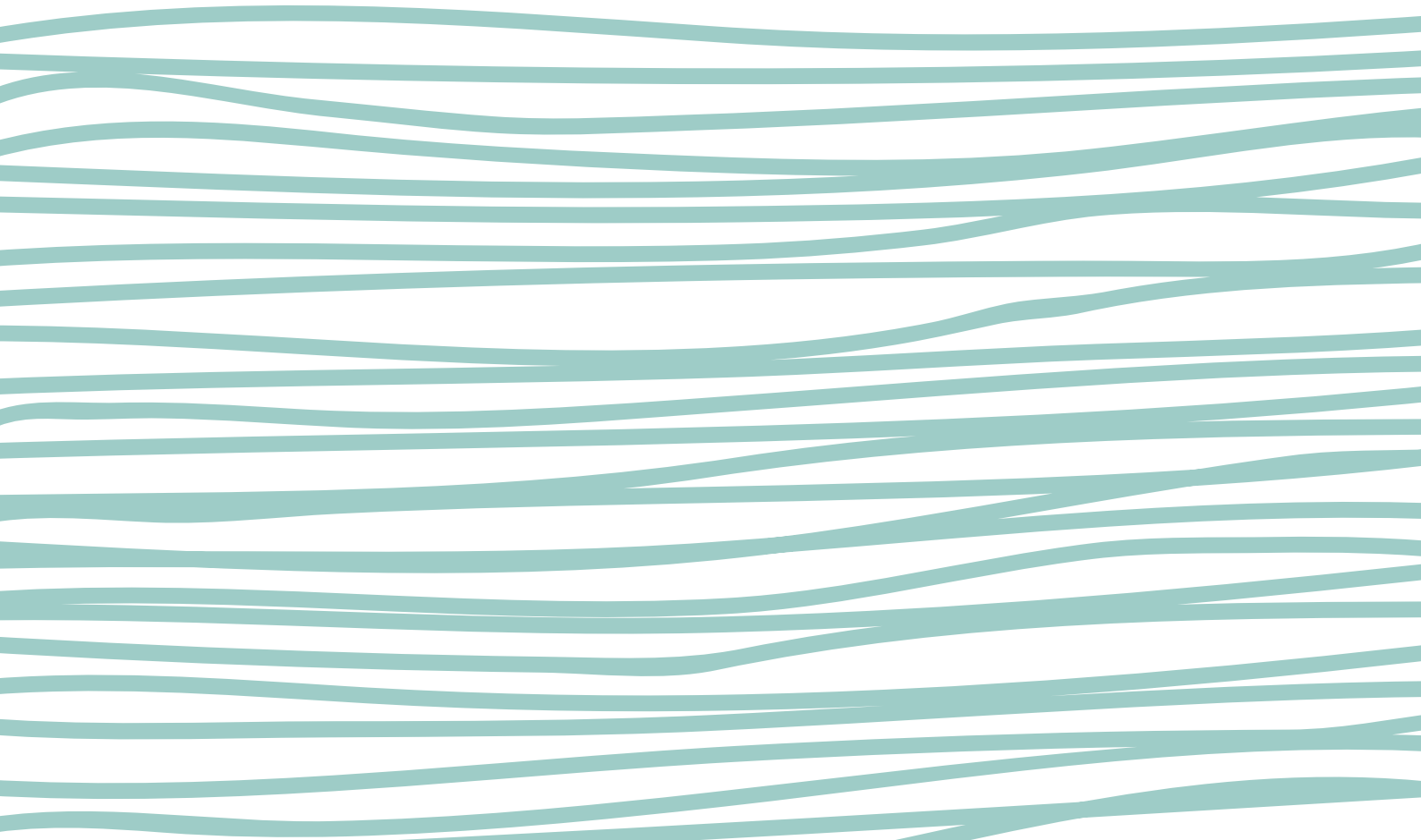
Similarly, while horses are horses and all are sentient (Brandt 2004), Racing NSW ('RNSW') continue to have responsibility and oversight for the welfare and wellbeing of 'racehorses', often applying a very selective approach to matters involving cruelty against industry managed racehorses (RNSW n.d.). In this context, the two recent animal cruelty cases in the horseracing industry are compelling: first, the slaughter of Gerry Harvey's brood mares and second, the case of the serious and brutal cruelty inflicted on a Kim Waugh racehorse named 'Tarsus' by jockey Serg Lisnyy (RNSW 2021a; Roots 2021a). According to the inquiry and hearing report published by RNSW, a complaint received on 25 March 2021 triggered an investigation in the treatment of Tarsus. The subsequent investigation found that Mr. Lisnyy had injured Tarsus during trackwork via the use of non-approved spurs. It also found that pre-apprentice jockey, Mr. Jake Barrett, had struck Tarsus two days later on 22 March 2021 (RNSW 2021a). Tarsus has subsequently been listed as retired by RNSW (RNSW 2021b) and his whereabouts is unknown.The former incident involved a number of Harvey's brood mares

CASE STUDY TWO CONTINUED

sent for slaughter at a knackery (Knaus and Wahlquist 2020) and, despite this being in clear breach of RNSW's own rules and regulations (Harris and Bourke 2020), Mr. Harvey has still not been adequately investigated, and no penalty or infringements have been issued. Similarly, while both Waugh and Lisnyy were initially fined by RNSW, with Lisnyy disqualified for a period of time (Roots 2021b), neither have faced animal cruelty charges as would apply if Tarsus was not a racehorse.

SECTION THREE

THE DRAFT ANIMAL WELFARE BILL 2022



SECTION THREE

THE DRAFT ANIMAL WELFARE BILL 2022

3.1 INTRODUCTION

While the Department maintains that the draft bill is based on feedback received during earlier stages of the reform process (DPI n.d.-c), Animal Liberation and a range of APOs provided detailed feedback at each stage of the reform process, including via responses to the Issues Paper (February - June 2020) and the Discussion Paper (August - September 2021). According to the Departmental publications, all feedback received in submissions to the Discussion Paper was reviewed and considered when developing the draft bill (DPI n.d.-c). Similarly, the Consultation Outcomes report explains that this feedback was reviewed, and the contents of responses were applied in the development of the draft bill (DPI 2021b). Therefore, the draft is based, at least in part, on feedback received during earlier stages of the reform process. Our experience of the consultation process and impartial consideration of the commitments made in the Animal Welfare Action Plan (DPI n.d.-a; DPI n.d.-b) suggest that this characterisation is false.

As noted, Animal Liberation provided detailed feedback at each stage of the reform process, including via responses to the Issues Paper (AL 2020) and the Discussion Paper (AL 2021). After a comprehensive review of the contents of the draft bill, we have found no alternative but to conclude that the recommendations we provided, particularly in response to the Discussion Paper, were not incorporated or adequately addressed either in departmental advice or the drafting of the bill. On this basis, we maintain that the reform process has, in addition to failing to adhere to commitments relating to the adoption of best-practice animal welfare science (DPI n.d.-a), failed to accord with its commitment to review the animal protection framework "in consultation with key stakeholders and the community, as a first step towards modernising the legislation framework" (DPI n.d.-b: 2). Given Animal Liberation's position as a pre-eminent APO with an exclusive focus on promoting permanent improvements to animal welfare (Chen 2016; Townend 2017; Villanueva 2018; AL 2022a), it is reasonable to believe that our credentials align with this description.

Given the apparent disregard of the recommendations provided in our responses to earlier stages of the reform process, particularly those relating to the bill's drafting under consideration, the recommendations we previously provided are briefly reiterated below. Though we have concerns about the approach taken by the Department, the current stage of the reform process represents a further opportunity for Animal Liberation to provide feedback and recommendations on the draft bill before it is brought before Parliament.

Animal Liberation's detailed and informed submissions to earlier stages of the reform process recommended that:

i.

THE EXPLICIT RECOGNITION OF SENTIENCE BE INCLUDED IN ANY FORTHCOMING BILL, PREFERABLY IN ITS OBJECTS

To adhere to commitments made by the NSW Government in its Animal Welfare Action Plan, particularly those relating to assurances that this reform process will reflect contemporary scientific evidence (DPI n.d.-a; DPI n.d.-b), such recognition must apply to all animals. Similar proposals in other Australian jurisdictions during equivalent reform processes indicate strong public support for explicitly recognising animal sentience in law (DJPR 2021a). This is further supported by the findings of the Commonwealth-commissioned survey detailed in section 2 of this submission (Futureye 2018; McGreevy et al. 2019).

On this basis, we recommended that in instances where available scientific evidence indicates uncertainty, the precautionary principle be applied so that doubt is not used as a mechanism for the postponement of measures to mitigate or prevent adverse welfare impacts (AL 2021). These considerations are discussed in further detail in the corresponding subsection on recognising and applying provisions on sentience below. As such, this forms a key recommendation of the current submission.

ii.

PROVISIONS THAT ENABLE PROTECTIONS TO BE DIFFERENTIALLY APPLIED BASED ON SPECIES MEMBERSHIP BE REMOVED FROM ANY FORTHCOMING ACT

A progressive and robust animal welfare framework is paramount to ensure that all legislation, including corresponding Regulations, Standards or Codes of Practice ('COPs'), apply equal and consistent protections. In principle, modern animal welfare legislation cannot differentially administer its application according to perceived human interests or in relation to the intended use or commercial utility of a particular species.

We note explicit references in equivalent legislation that recognises that animals have an ethical significance beyond their economic or instrumental value. We recommend that the NSW Government consider the approach taken by the Norwegian Government, whose Animal Welfare Act 2010 states that "animals have an intrinsic value which is irrespective of the usable value they have" (Hurn et al. 2017).

iii.

ANY FORTHCOMING ACT BE APPROPRIATELY RESOURCED AND TRANSPARENT

Sufficient resources, including adequate funding, must be provided by the NSW Government in order to allow ACOs currently authorised to carry out their legislated functions. The details of such funding should also be publicly available and easily accessible. In addition, measures must be established to rectify the structural conflicts of interest we will demonstrate are persistent in the proposed new framework.

iv.

THE REGULATORY AND LEGISLATIVE FRAMEWORK BE CONSISTENT WITH CONTEMPORARY AND EMERGING COMMUNITY EXPECTATIONS

Based on data obtained through the national survey commissioned by the Commonwealth discussed in section 2 of this submission, 95% of Australians view farmed animal welfare as a concern and 91% want reforms to address this (Futureye 2018). Most Australians, therefore, believe that there is a comprehensible gap between community expectations and regulation. Subsequent assessments have found that these concerns are largely due to an increased focus on animals' sentience and a corresponding "fundamental community belief that animals are entitled to the protection of relevant rights and freedoms" (Windsor 2021). Notably, these community expectations closely align with activist sentiment (McGreevy et al. 2019). As such, these concerns and expectations are not anomalous but representative of expectations held by a broad cohort of the Australian community.

v.

AN INDEPENDENT OFFICE OF ANIMAL WELFARE ('IOAW') BE ESTABLISHED

Per several recommendations to develop an IOAW to correct deficiencies in the existing framework made by other state government inquiries, an independent office must be appropriately funded, committed to, and incorporate adequate expertise in policy, science, and the law relating to animal welfare issues. It must be entirely separate and be unimpeded by the influence of commercial or political interest to ensure transparent compliance, enforcement and policymaking. The IOAW should have sufficient expertise and experience in animal welfare and have the capacity to remain up-to-date on emerging issues and global legislative developments impacting animals. This should include, but not be limited to, climate change and habitat loss, community expectations and any relevant international developments. For further discussion, see the appropriate subsection in the recommendations section below.

vi.

ANY FORTHCOMING LEGISLATION BE TITLED THE ANIMAL CARE AND PROTECTION ACT

Such a title aids in providing the community clarity and consistency in purpose (AL 2021).

3.2 RESPONSE TO THE DRAFT BILL

3.2.1 | OBJECTS: GENERAL

The objects section of the legislation is intended to set out the intent and purpose of the legislation to educate the community about its provisions and guide those charged with its application and interpretation (RSPCA Australia 2019c). Objects are important elements of any legislation because they are considered by courts when deciding the law's intent and interpreting the intended meaning of provisions (ALRC 2010; DPI 2021a: 9). As such, it can be referred to when resolving doubt or ambiguity (NSW Government 2020a).

The Discussion Paper provided by the Department during the second stage of the consultation process, outlined in section 1 and subsequently discussed in various sections of this submission, acknowledged the function of objects (DPI 2021a: 9). It explained that objects "outline the purpose of a piece of legislation and are used by the courts and others to help understand what the laws are intended to achieve and to interpret the intended meaning of specific provisions" (ibid). Similarly, the Consultation Outcomes report published by the Department after receiving responses the Discussion Paper noted function of objects (i.e., that they "outline the intent" of the law) (DPI 2021b: 7).

Under section 3 of POCTAA, its objects are the prevention of cruelty to animals and the promotion of their welfare, primarily by requiring those in charge of animals to provide them with care, treat them in a humane manner and generally ensure their welfare. These are largely replicated in section 3 of the draft bill, which identifies the objects of the draft bill as promoting animals' welfare and preventing animal cruelty. Section 3 is supported by Section 4, which provides details on how the objects of the draft bill will be achieved. These include several general provisions relating to the provision of care and protection, including the establishment of "a baseline of acceptable conduct" through minimum care requirements, "developing standards for the care of animals", "prohibiting certain actions and activities", "restricting when and by whom certain activities that may cause harm to animals may be performed" and providing a licensing framework to regulate such conduct. While we will discuss these supporting provisions in their relevant subsections below, the remainder of this subsection will provide our responses to sections 3 and 4 of the draft bill.

The Discussion Paper noted that feedback previously received by the Department indicated that the current objects of POCTAA, outlined above, are "not effective in explaining the purpose of the laws nor communicating how the laws will achieve that purpose" (DPI 2021a: 9). On this basis, the Discussion Paper proposed updating the objects of the Act to reflect the intent of policy proposals, particularly how the intended purpose and content of the legislation will achieve its objects (ibid). As we have shown, this proposal is reflected in section 4 of the draft bill. Despite this, however, the finding that the objects contained within POCTAA were inadequate and the proposals to update these outlined in the Discussion Paper remained problematic as was reiterated in the Consultation Outcomes report. This document noted that a key issue raised during the Discussion Paper consultation process were "concerns that the objects provide less clarity than the existing objects" and thereby "lose important considerations" (DPI 202b: 7). One of the key motivating factors informing this conclusion were concerns that the objects did not make "specific reference to sentience and/or the intrinsic value of animals" (ibid). Similarly, a key concern identified by the Department in responses to the Discussion Paper was related to the inappropriateness of using the terms "unreasonable" and "unnecessary" in the objects of the Act (ibid).

The generalised framing of animal cruelty as an act or omission that results in "unnecessary harm", particularly in clauses defining "animal cruelty" under section 7 of the draft bill, mean that companies whose operations routinely involve the often violent harming of animals are effectively protected from prosecution unless it can be shown - *beyond a reasonable doubt* - that the pain and suffering they cause is not "unnecessary".[30] While these provisions may be applied so that animals are theoretically protected from harm as *a general rule* (Gullone 2017), framing that qualifies the primary objective of the law (i.e., the promotion of welfare and the prevention of cruelty, as per the stated objects of the draft bill under section 3) with subjective preconditions is inherently contentious because the welfare of animals is thereby appraised against the perceived human needs or interests (Arbon and Duncalfe 2014).

In addition to these concerns, which we have outlined in previous responses to the Issues and Discussion Papers (AL 2020; AL 2021), we have significant concerns about the exemptions and defences triggered by adherence to COPs or Standards. As the relevant subsection below will elucidate, these exemptions and defences are contrary to the objects of both POCTAA and the draft bill. As critics have explained, "when taken together these mean that the legislation lacks application to a vast majority of animals" (Ellis 2010). As our response to the Issues Paper concluded, the objective to "prevent cruelty to animals" in Section 3 of POCTAA and replicated in Section 3 of the draft bill is highly conditional and lacks the requisite robustness of modern animal protection legislation (AL 2020: 15). Our response to the Discussion Paper reinforced this position, noting that "the objects of animal welfare legislation should reflect the intrinsic value of its subject (i.e., the animals to which the law applies) and thereby restrict, regulate and enforce provisions crafted to provide them with protection" (AL 2021: 7). On this basis, we concluded that a clear objects clause would supply a functional reference framework to facilitate the State's stated intention (ibid).

In this regard, the ACT's *Animal Welfare Act 1992* ('AWA') objects are instructive. These state that the AWA's guiding objects are to recognise that:

a) *animals are sentient beings that are able to subjectively feel and perceive the world around them;*

b) *animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value;*

c) *people have a duty of care for the physical and mental welfare of animals.*

Section 4A(2) of the AWA explains how these, comparatively progressive, objects are to be achieved:

a) *by promoting and protecting the welfare of animals;*

b) *by providing for the proper and humane care, management and treatment of animals*

30 New South Wales was the first Australian state to insert the "no unnecessary pain or suffering" standard in its animal protection legislation (An Act for the More Effectual Prevention of Cruelty to Animals) of 1850 (Emmerson (1993). Though this was subsequently adopted in other colonial jurisdictions and remains a standard provision in most Australian animal protection laws (White 2016b), such a framing is at odds with the spirit of the draft bill. Nevertheless, it is reasonable to believe and expect, based on the draft bill's objects, that ill-treatment is cruel and that pain or suffering, however "unnecessary" or "necessary", is still cruel (Hill 1985). This framing, coupled with the high burden of proof required to establish that harm or cruelty has occurred "beyond a reasonable doubt" (Walker-Munro 2015; Morton et al. 2020), is often compounded when claims are overturned by appeals (Manning et al. 2021).

c) *deterring and preventing animal cruelty and the abuse and neglect of animals" and;*

d) *enforcing laws that enable these outcomes.*

As we have demonstrated, our responses to the preceding stages of the current consultation process have maintained that while the present reforms appeared to offer an opportunity to correct existing inconsistencies in the State's animal welfare framework (AL 2021: 6-7), these structural flaws have not been rectified in the provisions of the draft bill. Instead, they appear to be an iteration of those contained within POCTAA insofar as they continue to enable a raft of defences and exemptions that make their inclusion functionally incoherent. Our concerns that existing and proposed objects were and remain insufficient have not been adequately resolved.

While the objects of the draft bill (i.e., "to promote the welfare of animals" and "to prevent cruelty to animals") are common objectives in many animal protection laws (Glanville et al. 2019; Morton et al. 2020), it is our firm position that as it stands these objects fail to adequately answer the fundamental question as to why animal welfare matters. We have demonstrated how this approach can be improved with reference to the AWA above. While the draft bill intends to provide mechanisms for the protection of animals, the objects of modern animal welfare legislation must answer this question by explicitly recognising the sentience of animals. That is, sentience is why animal welfare matters (Blattner 2019; WAP 2020b; DAWE 2021).

Finally, as other state RSPCA's have explained, a common complaint associated with animal protection legislation stems from the fact that the community's understanding of "what constitutes an offence" and "the reality of the act" are often incompatible or opposed (Morton et al. 2020). This has been noted for some time on the basis that "prejudicing an animal's welfare does not of itself amount in law to cruelty" (Radford 2001). We have demonstrated, particularly in subsection 2.2, that this conflict is increasingly associated with the community's rising demands for the meaningful protection of animal welfare under the law and the absence of explicit recognition of sentience in these laws. The following series of subsections will elucidate this conclusion and provide the Committee with a strong basis for the explicit recognition of sentience in the objects of the draft bill.

3.2.2 | SENTIENCE I: GENERAL COMMENTS

During earlier stages of this reform process, Animal Liberation registered significant concern that Departmental documents failed to refer to or propose a provision within the draft bill that explicitly recognised sentience (AL 2021: 7). With reference to the Department's publication of the Consultation Outcomes report, it has since become apparent that this concern was a general and common theme in submissions made in response to the Discussion Paper (DPI 2021b: 7). Given the absence of explicit recognition of sentience in the draft bill, this subsection will briefly reiterate our position and conclude by questioning whether its conspicuous absence represents a failure to adhere to commitments made by the NSW Government in its Animal Welfare Action Plan (DPI n.d.-a; DPI n.d.-b).

While sentience is derived from the Latin verb '*sentire*', meaning "to feel" (Mancy 2015), it extends beyond the capacity to experience physiological experiences to include psychological states (Broom and Fraser 2015; Ledger and Mellor 2018;

Kotzmann 2020a; Kotzmann 2020b; Powell and Mikhalevich 2020; RSPCA Australia 2019e). The belief in the presence of sentience in other-than-human animals has a long history that dates back to at least the 19th century (Ibrahim 2007). This is illustrated in Figure 2 provided on page 13. Therefore, the major challenge is not the acceptance of sentience but an institutional acknowledgement that the increasing scale of animal exploitation is "among the main causes of the suffering" that humans impose on other animals (Kona-Boun 2020). This is what makes sentience and welfare particularly important.

Despite this widespread and increasing awareness of animal sentience, many historical assessments, laws, and practical applications have generally focused on minimising its negative aspects (i.e., pain, stress and suffering) (Yeates and Main 2008; Proctor 2012; Laurijs et al. 2022). While this represents progress, such an approach can overlook or discount the importance of facilitating and ensuring positive emotions or affective states (i.e., happiness, joy and love) (Balcombe 2009; Fredrickson 2013; Rault et al. 2020). However, modern animal welfare science recognises that an approach that myopically concentrates on minimising negative experiences alone is incomplete (Laurijs et al. 2022) and incompatible with community expectations (Vigors 2019). As such, though animal welfare can be defined as "the balance of positive and negative emotions, where positive emotions are key to a good animal life" (Laurijs et al. 2021), for an animal to have a good life, the frequency of pleasant experiences should outweigh the frequency of unpleasant experiences (FAWC 2009; Green and Mellor 2011; Webb et al. 2019). In this regard, it is appropriate to promote a position that incorporates the capacity for an animal to be "the subject of experiences that matter to that individual" (Jones 2013). It is, in other words, reasonable to conclude that because animals have a view that matters to them, and increasingly us (Futureye 2018), in our quest to provide a good life for them we are obliged to actively and transparently consider their point of view (Freeman et al. 2011; Merkies and Franzin 2021). As the remainder of this subsection will show, the adoption of an explicit recognition of sentience emphasises the perspective of animals (Blattner 2016). This is based on the principle that "their wellbeing matters because it matters to them" (Ryder 1993; Bekoff and Meaney 1998; Linzey 1998).

Over the past four (4) decades, scientific opinion has progressed to a virtually unanimous agreement that animals are sentient (D'Silva 2006; Duncan 2006; Proctor 2012; Mellor 2019; Kotzmann 2020a). Through the 1980s, science gradually accepted that the importance of feelings was not only central to animal welfare but was "the only thing that matters" (Dawkins 1980; Duncan 1996; Duncan 2004).[31] In the process, sentience has been increasingly recognised in the equivalent animal protection legislation of many states (Duncan 2006; James 2006; Kirkwood 2006; López 2016; OIE 2017; Harvey 2021b; Wyatt et al. 2021; Ball 2022; Lessard 2022). As the RSPCA explains, "recognising animal sentience reflects scientific evidence, contemporary best practice in animal welfare legislation and is increasingly a feature of animal welfare legislation around the world" (RSPCA Australia 2018b). States whose laws reflect scientific evidence thereby follow a 'sentientist" ethic, whereby the importance of animals and their wellbeing is based, first and foremost, on their intrinsic value (Blattner 2016). As a benchmark and a general principle, it is reasonable to conclude that nations with the most protective animal welfare laws formally and explicitly recognise animal sentience (Park 2021).

31 While the term "feelings" is appropriate, the term has been identified as being "too insubstantial for states like pain and suffering" (Fraser 2008). On this basis, "affective states" has been promoted as a more appropriate term insofar as it refers to emotions and other feelings that are experienced as pleasant or unpleasant (Fraser and Duncan 1998; Fraser 2008).

3.2.3 SENTIENCE II: THE AUSTRALIAN APPLICATION OF A UNIVERSALLY RECOGNISED SCIENCE

As the previous subsections have shown, contemporary scientific evidence is clear that most animals are sentient. In 2009, Australian animal protection scholar Peter Sankoff observed that "[w]e have formally abandoned the notion that these sentient beings are 'just' animals and undeserving of moral concern" and that it is likely that "the large majority of people in Australia […] believe that animals matter, and that their welfare is something that is worthy of being considered" (Sankoff 2009). We have demonstrated that this conclusion was correct. Despite this, the practical application of sentience in the Australian context is a relatively recent development.

Though the Australian Animal Welfare Strategy ('AAWS') explicitly covered "all sentient animals" (Bartlett 2009; DAWE 2021), and its Advisory Committee provided wider representation and oversight in the development of standards (Dale and White 2013), it was subsequently abolished (Chen 2016). Critically, the recognition of sentience in the AAWS "underpinned the whole Strategy" as the Commonwealth recognised that "sentience is the reason that welfare matters" (WAP 2020b; DAWE 2021).

Since the abolition of the AAWS, sentience has represented a key theme of recent reviews in other Australian jurisdictions.[32] Nationally, the Commonwealth-commissioned research report detailed in section 2 of this submission noted that its survey found that most respondents believed animals to be sentient (Futureye 2018: 6; McGreevy et al. 2019). On this basis, the report concluded that such a belief logically translates into the conviction that animals "should be safeguarded through the adoption of rights and freedoms" (Futureye 2018: 6). In this regard, the survey found that most Australians' beliefs have "high alignment with activist statements relating to animal rights and freedoms" (Futureye 2018: 7). Subsequent analyses of these findings explained that it was "not just activists" but "9 out of 10 people" who are concerned about animal welfare" (McGreevy et al. 2018). Partly in response to these increasing community concerns, the Australian Capital Territory ('ACT') amended its Animal Welfare Act 1992 ('AWA') by its Animal Welfare Legislation Amendment Act 2019 to make it the first Australian jurisdiction to explicitly recognise animals' sentience as part of the objects of its primary animal protection law (Evans 2019; Kotzmann 2020a).

Recent reforms in other Australian jurisdictions are of particular relevance to the current inquiry. The Directions Papers provided by the Victorian Government during the recent review of its equivalent animal welfare framework, for example, provided a series of options for recognising animal sentience (DJPR 2020a). These included options for referring to sentience in the objects, the principles or the definitions section of the Act (DJPR 2020a). In stark contrast to the NSW Government's equivalent publication, the Victorian Government's Animal Welfare Action Plan states that "science demonstrates that animals are sentient" (DJPR 2021b). This Action Plan, published in 2017, also proposed a series of reforms to its *Prevention of Cruelty to Animals Act 1986* ('POCTAA') (DEDJTR 2017). In phrasing that echoed the recognition contained within the AAWS, it noted that "sentience is the primary reason that animal welfare is so important" (DEDJTR 2017: 7). Today, the Victorian Government recognises animals as sentient, noting that "they experience feelings and emotions such as pleasure, comfort, fear and

32 Though a proposal to introduce a provision formally recognising sentience was not included in the April 2021 Discussion Paper produced by the Queensland Government (DAF 2021a), its subsequent consultation outcomes report noted that "the recognition of animal sentience" formed a key issue raised in submissions (DAF 2021b: 6). It acknowledged that ~50% of submissions "called for animal sentience to be explicitly recognised", and only one submission opposed its inclusion in an amended Act (DAF 2021b: 36). Finally, many recommended that the Queensland Government "follow the lead of other jurisdictions […] which already recognise animal sentience" (ibid).

pain" (DJPR 2021b). Elsewhere, the Victorian Government noted that recognising sentience in other animals is a reflection of the knowledge that "caring for an animal is different to caring for your vehicle, house or other inanimate property" (DJPR 2020b). This progression has been cited as a key improvement in the World Animal Protection's recent animal protection index ('API') (WAP 2020a). Therefore, the Victorian Government's equivalent reform process has been described as a landmark decision (Clarke 2021). In this regard, it is apparent that the NSW reform process reflects neither the commitments made by the NSW Government in its Animal Welfare Action Plan nor equivalent changes made in other Australian jurisdictions relative to the explicit recognition of animal sentience under state law.

3.2.4 SENTIENCE III: THE OMISSION OF SENTIENCE IN THE DRAFT BILL IS UNACCEPTABLE AND COUNTER TO THE NSW GOVERNMENT'S COMMITMENT TO DRAFTING LEGISLATION THAT REFLECTS SOUND SCIENCE

The frequently asked questions ('FAQ') document provided by the Department concerning the draft bill acknowledges that "the science behind animal welfare has evolved since the laws were introduced around 40 years ago", and that community expectations have similarly evolved in that time (DPI n.d.-c). We have demonstrated the scope and significance of these societal changes elsewhere, particularly in subsection 2.2. Despite this acknowledgement, echoed in the Discussion Paper (DPI 2021a), the legislation the NSW Government has developed as a replacement to POCTAA, the Exhibited Animals Protection Act ('EAPA') and the Animal Research Act ('ARA'), does not correspond with or satisfy the spirit of this rhetoric. Instead, the draft bill results from other, less earnest ambitions. Namely, that the four-decade-old animal protection framework is "unnecessarily complex and prescriptive" (DPI n.d.-c).

Ultimately, the Department has failed to address the conspicuous omission of sentience in the draft bill. We have shown that the Consultation Outcomes report published by the Department in December 2021 noted that explicit calls for the inclusion of a specific reference to sentience in the objects of the draft bill were a key component of submissions made during the consultation period for the Discussion Paper (DPI 2021b). It nevertheless argues that the draft bill "acknowledges the concept of animal sentience through reference to protecting animals from harm" (ibid). Though the Department maintains that this represents an implicit recognition of sentience, such implicit recognition was present in the Act the draft bill intends to replace (Kotzmann 2020a). Animal Liberation's informed conclusion is that such a blasé justification has no basis in criminal law-making, particularly when its absence is contrary to commitments to honour sound science and community expectations. We have shown in previous subsections that the refusal to recognise sentience explicitly defies each of these considerations. Therefore, the omission of explicit recognition is not conducive to the NSW Government's commitments to incorporate sound science in the development of animal protection legislation (DPI 2021a).[33] 31

While the capacity to experience harm implicitly recognises the capacity to feel or consciously experience negative or positive welfare states, an inferred recognition such as this does not have the same effect as expressly recognising sentience in

33 See s4(2) and s4(2)(a) of POCTAA.

the objects of the draft bill. It is misleading to allege that it does, particularly when no supporting facts are offered in its defence. As our response to the Discussion Paper noted, expressly recognising sentience as an object will assist by providing further clarity of the purpose of the legislation and thereby facilitate improved consistency in its interpretation (AL 2021). In the process, such clarity would also assist magistrates and judges in their interpretative and sentencing processes and ensure improved consistency with the application of the law. As discussed above, these benefits have led many other national and international jurisdictions to expressly recognise animal sentience in legislation and policy. This will be particularly important in ambiguous cases and could persuade other decision-makers in policy decisions relative to the draft bill.

Finally, given the increasing recognition of animal sentience in international law (Futureye 2018) and in states with whom Australia trades, it is reasonable to conclude that the omission of sentience in Australian legislation may become a commercial obstacle (Turner and D'Silva 2006; HSI 2021). It could, for instance, influence trade relations similarly to restrictions on the trade of products containing certain species (Blattner 2016).[34] We note, for example, the trade implications witnessed with the UK's departure from the European Union ('EU') and its subsequent adoption of sentience in its equivalent animal protection legislation (McCulloch 2019; McCulloch 2021). In particular, we note the Free Trade Agreements ('FTAs') under negotiation between Australia, the UK, and the EU, including chapters that recognise sentience (DIT n.d.; DIT 2021; RSPCA WA 2022). While it can be reasonably argued that such international agreements support the protection of animal welfare at an international level (Blattner 2016; Sykes 2021), it is equally reasonable to conclude that the omission of provisions recognising sentience could similarly produce significant and costly trade impediments.

In sum, due to growing recognition and concern that most animals are sentient, it is increasingly apparent that the current animal protection framework in NSW does not sufficiently ensure their wellbeing or adhere to contemporary science and community expectations (Kotzmann 2020a). Our informed conclusion is that the exact characterisation remains true of the draft bill under consideration. As such, Animal Liberation notes with keen anticipation the Greens NSW parliamentary advice on 24 February 2022 to introduce a Bill to explicitly recognise animal sentience under law.

3.2.5 | MEANINGS

Definitions are a crucial element of animal protection legislation (Morton et al. 2020; Pietrzykowski and Smilowska 2022). The meaning of "harm" in the draft bill includes terms usually applied to humans to describe states of the mind (Morton and Griffiths 1985; Baumans et al. 1994; Pietrzykowski and Smilowska 2022): "distress", "pain", "physical suffering" and "psychological suffering".[35] As such, modern science and animal law increasingly recognise that the prevention of suffering alone is not adequate to ensure good welfare (RSPCA Australia 2019e; RSPCA Australia 2019f). Rather, positive experiences and affective states have been identified as central elements of good welfare and quality of life (Boissy et al. 2007; Panksepp 1998; Panksepp and Biven 2012; Mellor 2015; Mellor and Beausoleil 2015).[36]

34 Consider, for example, the European Parliament's Council Regulation 1007/2009 on the trade in seal products (Blattner 2016).

35 See section 11 of the draft bill.

36 For example, behaviour is often indicative of positive states in some, but not all, animals. This may include play, exploration and collaborative and interactive exchange with conspecifics (Fraser and Duncan 1998; Yeates and Main 2008).

Though there is no universal definition of animal welfare (Cornish et al. 2016), and the term is used with varied meanings (Hemsworth et al. 2015), as different stakeholders have different interests and perceptions (Vanhonacker et al. 2008; Fisher 2009), the most widely adopted definition of animal welfare is based on an individual's state concerning their capacity to cope with their environment (Broom 1986; Fraser and Broom 1990; Alonso et al. 2020). The Australian Animal Welfare Standards and Guidelines ('AAWS&Gs'), and a range of pre-existing model codes of practice ('MCOPs'), adopt this approach and define animal welfare as "the state of an animal and how well it is coping with the conditions in which it [sic] lives".[37] International bodies have also adopted this (Carenzi and Verga 2009).[38]

After Ascione (1999), Animal Liberation subscribes to the definition of "animal cruelty" as socially unacceptable behaviour that intentionally causes physiological or psychological pain, suffering, or distress to an animal that may or may cause death. We note that much cruelty involved in the use of animals is increasingly unacceptable to a growing cohort of Australian society (Gullone 2017; Futureye 2018). We have similarly demonstrated the increasing importance of this as it applies to emerging community expectations elsewhere in this submission.[39] As such, we wish to provide an updated definition applicable to the current discussion: "an act or omission that causes suffering, distress to, and/or the death of an animal for instrumental purposes".

While we have demonstrated that the factors outlined above are widely accepted and understood, it has been shown that several factors both cause and limit their application in practice. For example, the lack of opportunities for animals in intensive facilities to engage in behaviour typical of their species leads to increased episodes of aggression, including cannibalism, tail biting, and stereotypies (Beattie et al. 1995; Cox and Cooper 2001; Scott et al. 2006). Though some recent studies have framed the capacity to engage in normal behaviours as a "luxury" (Godyń et al. 2019), opportunities to do so are a hallmark of equivalent legislation (Bracke and Hopster 2006) and form a key component of the Five Freedoms of animal welfare (RSPCA Australia 2021e). Rather than meaningfully providing for these, however, preemptive measures are often taken (Ibrahim 2007).

As a result, the majority of farmed animals suffer routine mutilations rationalised as precautionary measures to minimise the impacts caused by intensive confinement and the psychological suffering this causes (Marcus 2005; Purcell 2011). These routine mutilations include castration, debeaking , and dehorning (Stevenson 1994; Nordquist et al. 2017). It has been shown that these mutilating procedures, coupled with intensive confinement conditions, have a range of adverse physiological and psychological impacts on animal welfare (Lidfors et al. 2005; Gregory 2007; FAWC 2009; Stafford and Mellor 2010; Ventura et al. 2013).[40] While these routine mutilations are justified because their operation improves animal welfare outcomes, the conditions and the underlying purpose of their confinement compel their use in the first place (Lockeretz and Lund 2003). In sum, many mutilations are carried out to preempt and prevent undesirable consequences of behaviours that may be manifested later (FAWC 2011a), often in response to conditions which the animal is unable to cope with, to minimise

37 See, for example, the Model Code of Pratice for the Welfare of Animals: Pigs. This document states that "one measure of good welfare in farmed pigs is that they are coping with the environment they are placed" (Commonwealth of Australia 2008: 1).

38 See the World Organisation for Animal Health (OIE 2016; OIE 2018), for example.

39 See subsection 2.2 of this submission

40 Studies have concluded that such routine mutilations are often carried out by personnel who have "simply not given a thought to the concept of animal suffering" (Webster 2005). This finding further supports concerns relating to low reporting rates of animal cruelty by employees of animal farming operations.

financial costs to producers (Rachels 1996; Ibrahim 2007; White 2011; Nordquist et al. 2017).

As previous sections of this submission have shown, the capacity for physical and psychological suffering in most animal species is no longer an issue of serious debate (Griffin 2013; Safina 2016; Kumar et al. 2019; Birch et al. 2020). Modern scientific conclusions drawn from behavioural and neural evidence confirms that most animals, including all farmed animals, are sentient: the catalogue of empirical studies on animal suffering constitute an indisputable confirmation that animals can and do experience physical and psychological suffering (Dawkins 2012; Broom 2016; Peggs and Smart 2016; Ng 2016; Mellor 2016; Alonso et al. 2020). As such, the remaining challenge is not recognising animals' capacity for suffering. Instead, it incorporates protections that adequately regulate and prohibit their commission. Though the methodology used to arrive at these conclusions differs from that applied in the study of human experiences (Fordyce 2017), it is notable that sentience is no more scientifically provable in humans than other animals (Balcombe 2009). As with humans who are unable, for one reason or another, to verbally communicate their feelings about their situation, reasonable extrapolations and conclusions may be made about the subjective experience of other animals based on an objective assessment of their specific situation (Duncan 2006; Brydges and Braithwaite 2008; Dawkins 2008; Mendl et al. 2009; Pietrzykowski and Smilowska 2022). That is, the inability to verbally communicate should not be used as a justification to negate the possibility that any sentient being, human or otherwise, can experience pain (Anand and Craig 1996; Williams and Craig 2016).[41] In the words of Jeremy Bentham, a 19th-century jurist on morals and legislation credited with being the first Western philosopher to argue that other animals deserve equal moral consideration under the law (Kniess 2019), "the question is not, 'can they reason?' nor 'can they talk?' but, 'can they suffer?'" (Bentham 1823). We have demonstrated that there is no evidence to justify or support a reasonable doubt that animals do suffer. Moreover, we have demonstrated that they do so on an astronomical scale.[42]

On this basis, Animal Liberation supports the inclusion of the psychological condition of animals as a consideration of welfare included under sections 8(b) and 11(c) of the draft bill. We note, however, that the key terms included in the draft bill lack consistency and clarity. As recent reviews of international animal law have shown, such inconsistency and opacity can thereby "hinder the development of coherent foundations for the legal protection of animals" (Pietrzykowski and Smilowska 2022).

3.2.6 | MINIMUM CARE REQUIREMENTS (s13-14)

The current animal protection framework overwhelmingly prioritises human interests over the basic needs of other animals (Arbon and Duncalfe 2014). Such dominion necessarily places a corresponding burden upon our behaviour and any activities that involve other animals.[43] Regulation of this is seen in the imposition of various obligations relative to our position of power, codified under primary animal welfare legislation (Goodfellow 2015). Such obligations often include

41 Though pain is a sensation borne of the presence of nociceptors, whose activation communicates the experience to the brain and produces a range of physiological symptoms typical of pain (Westlund and Craig 1996), pain can also trigger behavioural changes that make it recognisable to observers (Pietrzykowski and Smilowska 2022).

42 See section 2 of this submission.

43 Elsewhere in this submission, we have emphasised that the NSW animal welfare framework must acknowledge that animals have intrinsic value, via the insertion of an explicit recognition of their sentience, and that this has precedent in Commonwealth publications. We have also demonstrated the existence of such approaches in equivalent legislation elsewhere in the world.

minimum care or duty of care requirements (White 2016a; White 2016b).

Across Australia, animal welfare legislation is developed and administered at the state and territory level (White 2007). In recent times, legislation has evolved to broaden its scope from simply prohibiting acts of cruelty to animals to promoting the welfare and wellbeing of animals. This is reflected in the concept of 'duty of care'. Our response to earlier stages of the present reform process, notably in response to the Discussion Paper, we noted that "minimum care" or "duty of care" requirements have become a central component of many animal welfare laws (AL 2021: 11). Though these requirements are framed in various ways in equivalent legislation elsewhere (Caulfield 2008b), each generally intends to provide a mechanism whereby it becomes a requirement to provide the basic needs of an animal in accordance with contemporary welfare science (Ellis 2010). In addition to the prohibition against cruelty (a negative duty), many jurisdictions have enacted provisions that impose positive obligations (White 2009).[44]

However, studies have shown that this framework does not necessarily capture current knowledge or facilitate improved outcomes (Mellor 2016). Though the combination of the negative duty prohibiting cruelty and the introduction of minimum care requirements, including those contained within the Discussion Paper (DPI 2021a) and inserted in sections 13 and 14 of the draft bill, appear to provide a high degree of protection insofar as they nominally apply to all animals (White 2009; White 2018), in practice these are often applied differentially across species or categories. This is primarily achieved through capitulation to Model Codes of Practice ('COPs') (Thiriet 2007; Boom and Ellis 2009). As such, previous responses to the Department recommended removing provisions that enable these instruments to override the primary animal protection legislation (AL 2021). Similarly, we recommended that "any introduced requirements must be applied to all animals and extend beyond prohibitions on cruelty" (ibid). While animals' physiological, social and psychological needs must be considered and provided for prior to their acquisition (i.e., during breeding and at birth), the framework is structurally stymied and effectively eroded by the introduction of subordinate laws applicable for particular types or purposes of animal use.

Therefore, it is reasonable to argue that this "deference to subordinate legislation creates a whole new system of inferior regulatory standards" that are applied to the vast majority of animals ostensibly covered by the primary framework (White 2007; Goodfellow 2015). Many components of COPs, moreover, are not legally binding and are often couched as advice rather than requirements (i.e., they are advisory rather than mandatory) (WAP 2020a). While Standards may be required, Guidelines are not. The Department, for instance, acknowledges that "it is not an offence if animals are not kept precisely as specified in the Codes" (DPI n.d.-e). Other COPs, such as the COP for the breeding of dogs and cats, contains a Guideline under section 8.3 on humane destruction advising that "all efforts should be made to home physically healthy and behaviourally sound dogs and cats" (DPI 2021c).

The current language of the draft bill, which draws on the terms of POCTAA, is inconsistent and unclear on basic terms pertaining to animal sensations and potential harms (Pietrzykowski and Smilowska 2022). Though Animal Liberation supports the inclusion of enforceable minimum care requirements in principle, it is vital that these be applied to all animals and that its provision is not compromised by exemptions or defences that render its inclusion inconsequential. As such, while Animal Liberation supported the replacement of existing "failure to provide,

44 The equivalent Queensland legislation, for example, includes "duty of care" provisions. In so doing, it became the first Australian state to extend the legal concept of a duty of care from one owed between humans to animals (see s17 of the *Animal Care and Protection Act 2001*). Subsequently, Tasmania, the Australian Capital Territory and the Northern Territory have also legislated the duty of care approach in their respective animal welfare frameworks (White 2009; White 2018).

prevent or report'' provisions[45], we strongly recommended that the provision refers to a consistent "duty of care" on the basis that such terminology aligns with the spirit of the provision and communicates this far more effectively (AL 2021: 12). Specifically, while noted that "the combination of a negative duty that prohibits cruelty with a duty of care proposed" in the previous Discussion Paper appeared to provide a high degree of protection (DPI 2021a), we maintained that "in practice such provisions are often applied differentially and selectively across species or individuals within species according to category and commercial 'use'" (AL 2021: 12). This position is supported by studies reviewing the arbitrary discrimination present in many animal protection frameworks (Shooster 2015).

Ultimately, we hold that the draft bill must embody high, mandatory and non-negotiable standards of care that effectively ensure the needs of animals are met and that these are uniformly achieved and thoroughly enforced.

3.2.7 | REQUIREMENTS TO COMPLY WITH STANDARDS (s20)

Lawyers and commentators have justified increasing pressure for severe sentences in response to acts of animal cruelty in terms of "an interest in proportionality" (Bagaric et al. 2019). Though this position holds that because there is a public interest in acknowledging animal abuse as a serious crime, the penalties for its commission should be commensurately substantial (ALDF 2019), others have argued that "this tidy mathematical notion of proportionality has always been a criminal law myth" (Marceau 2021). Such ripostes note that in legal cases involving human victims, a significant library of research shows that the most acute punishments are often exacted upon persons with low social status who harm a high-status victim (Kleinfeld 2013). These perspectives highlight that such disparate outcomes result from ingrained prejudices within the legal system rather than explicitly authorised by law (Marceau 2021).

When such considerations are applied in the context of animal victims, the plain text of legislation sanctions a hierarchy that effectively assures discriminatory treatment and suffering. As such, critiques have shown that the law explicitly produces "categories of exemptions" for a wide range of animals "whose victimhood is often invisible to the law and therefore beyond criminal opprobrium" (Marceau 2021). For example, though section 20(1) of the draft bill contains a "requirement to comply with standards", section 20(2) negates this requirement if the act in question is carried out "in accordance with a prescribed standard".

The range of these exemptions this provision facilitates is particularly striking in a law intended to modernise the existing animal welfare framework for the first time in forty (40) years. It reinstates pre existing provisions in POCTAA that inoculate offenders from prosecution. In the process, this places the estimated 67,000,000 farmed animals across New South Wales at risk of legalised acts of cruelty (ABS 2021). Unless a prosecutor can show, beyond a reasonable doubt, that the pain inflicted on any of these 67,000,000 animals is "unnecessary harm", such provisions effectively inoculate those engaging in harmful acts rather than the animals the draft bill is ostensibly designed to protect. As such, they are shielded from liability as long as they can attest that their animal management or husbandry practices are customary among their competitors, and perhaps as long

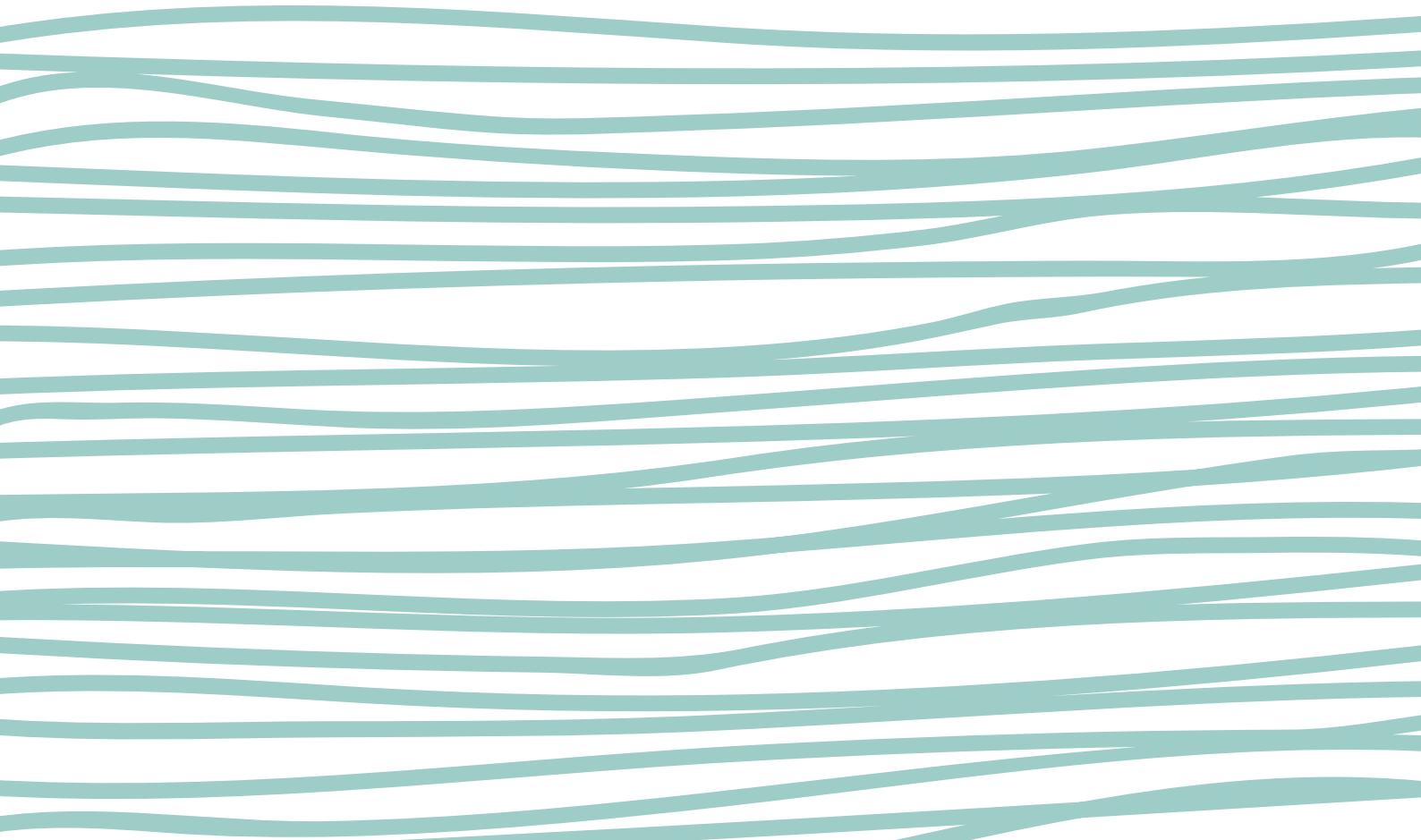
45 For example, see the following sections of POCTAA: s5 ('Cruelty to animals'), s8 ('Animals to be provided with food, drink or shelter'), s9 ('Confined animals to be exercised'), s14 ('Injuries to animals to be reported') and s33B ('Permitting or failing to prevent commission or continuance of offence').

as they can find a veterinarian that will endorse the practice.

While Animal Liberation supports the mandatory requirement for a person in charge of an animal to comply with animal welfare standards under section 20(1) of the draft bill, section 20(2) is inappropriate as it invalidates this requirement.

SECTION FOUR

RECOMMENDATIONS



SECTION FOUR

RECOMMENDATIONS

4.1 BACKGROUND

Throughout this submission, Animal Liberation has demonstrated and described the requisite supporting evidence that substantiates the preparation and provision of the following recommendations. In addition, and in line with the commitments made by the NSW Government that we have outlined, we anticipate that the Committee thoroughly and transparently consider these recommendations.

R1.

THE NSW GOVERNMENT MUST EXPLICITLY RECOGNISE SENTIENCE

While subsection 2.2 demonstrated the community's increasing that sentience be explicitly recognised, subsection 3.2 demonstrated the scientific basis for explicitly recognising sentience in the draft bill. Based on the incontrovertible evidence these subsections provided, Animal Liberation strongly recommends the insertion of an explicit recognition of sentience.

This recommendation is also supported by recognising psychological suffering in the meaning of "harm" provided in section 11 of the draft bill. As we have shown, the absence of explicit recognition of sentience neither reflects nor is incompatible with sound animal welfare science and public expectations.

We propose the following definition of sentience be inserted into the objects of the draft bill: "the ability to perceive or feel things, including both positive and negative states, for example, pleasure and pain".

R2.

THE NSW GOVERNMENT SHOULD APPLY THE PRECAUTIONARY PRINCIPLE TO THE RECOGNITION OF SENTIENCE

While an understanding of cognitive processes, such as perception, memory or learning, may provide some valuable information or insights into the experiences of other animals, it is awareness of what is happening that is critical for their welfare (Dawkins 1993; Duncan 2006). Animal Liberation concurs with Waldau (2016), who maintains that emerging animal law will position animals as candidates for legal protections "no matter what their similarities to human abilities might be" and that "an ethic of inquiry will not pursue first and only whether other animals are 'like us' or familiar and favoured by humans" (Waldau 2016). Instead, modern animal law will consider whether animals have "demonstrable cognitive, emotional, cultural and sentience-based capacities that our ethical imaginations recognise as in and of themselves important" (Waldau 2016). In addition to the explicit recognition of sentience we have recommended above, Animal Liberation further recommends the application of the precautionary

R2.

principle to ensure that its exercise is capable of reflecting both evolving animal welfare science and community expectations in line with the public commitments made by the NSW Government (DPI n.d.a-).

Fundamentally, the precautionary principle is used to support and facilitate appropriate decision-making processes instead of mandating particular or predetermined outcomes (Fisher and Harding 2006; Hamman et al. 2016). While we note that the principle, aligned with the Rio definition[46], was initially intended to guide environmental policymaking and is thereby included in the Protection of the Environment Administration Act 1991 ('PEOA') for this purpose[47], its use is increasingly supported by contemporary scientific advice in other contexts (Birch 2017). For example, the principle has been applied to various aspects of public health policy. The UK Health and Safety Executive notes that while the precautionary principle was originally framed in the context of preventing environmental harm, it is now "widely accepted as applying broadly where there is [the] threat of harm to human, animal or plant health, as well as in situations where there is a threat of environmental damage" (UK Health and Safety Executive 2017). Similarly, the World Health Organisation ('WHO') explains that the precautionary principle "encourages policy-makers and public health professionals to consider [...] how to account for growing complexity and uncertainty" (Martuzzi and Tickner 2004).

In applying the principle to issues relating to public health, the reference to "serious or irreversible damage to the environment" in the Rio definition is replaced with "serious, negative public health outcomes" (emphasis added) (John 2011). We note, furthermore, that it has become increasingly evident that animal husbandry can have a negative impact on public health. On this basis, the pre-emptive or "precautionary" killing of healthy animals, often justified based on the precautionary principle (Hamman et al. 2016; van Herten and Bovenkerk 2021), has become a routine response in zoonotic disease control (Degeling et al. 2016).[48] As such, we query its selective exercise in this context and not in those that directly relate to the conditions that cause or otherwise produce zoonotic diseases (Rohr et al. 2019; Espinosa et al. 2020). Because improving the treatment of animals could generate public health benefits, there have been calls to incorporate animal protection into public health policy (Akhtar 2013).

As we have demonstrated in an animal welfare context, ethical perspectives and decision-making processes may be derived from or influenced by scientific evidence of sentience (Broom and Fraser 2015). We have also demonstrated that the value and importance of science are recognised in the NSW Government's commitments under the Animal Welfare Action Plan (DPI n.d.-a). This is recognised in Division 1 of Part 1

46 The original definition was devised by the United Nations ('UN') during its Rio Conference and states that "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (United Nations 1992).

47 Under Part 3, section 6(2), the precautionary principle is defined as follows: "if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation".

48 For example, during the Bovine Spongiform Encephalopathy ('BSE') outbreak in the United Kingdom, 4.7 million cattle were killed as part of an eradication program justified as a protective public health measure (van Herten and Bovenkirk 2021). This mass killing operation was carried out because indicators suggested that by consuming the meat of cattle affected by BSE, commonly called "mad cow disease", humans could acquire Creutzfeldt Jakob's disease. Though the aetiology of the disease was not well understood, many European policymakers decided that the deaths of an estimated 200 people between 1985 and 1999 justified these extensive and radical measures (Jones 2001). Similar cases include the Q-fever outbreak in the Netherlands between 2007 and 2012 (Bruschke et al. 2016) and the recent killing of all mink infected with COVID-19 in the Netherlands and other European countries (Oreshkova et al. 2020), despite there being no direct threat to public health and acknowledgement from public health experts that human-human transmissions remained the most important driver of its spread (van Herten and Bovenkerk 2021).

R2.

of the draft bill, which explains how its primary objects are to be achieved: section 4(a)(i) maintains that its primary objects (i.e., the "promotion of welfare" and the "prevention of cruelty") are to be achieved under the bill by "establishing a baseline of acceptable conduct, by persons who are responsible for animals, to ensure animals are provided with an acceptable standard of care". In addition to the fact that sentience is widely accepted and its inclusion in current animal welfare legislation represents adherence to sound science (DEDJTR 2017; Mellor 2019), it should be appropriately considered when constructing legally acceptable treatment and the laws that establish and regulate animal welfare policy (Heikkila 2018).

We note, for example, that a critical case that applied the precautionary principle as laid out in the PEOA contained a decision citing the level of public concern as a key consideration in decision-making processes relating to "threats of serious or irreversible damage".[50] Throughout this submission, we have demonstrated that threats of serious or irreversible damage to animal welfare are of increasing public interest, primarily in response to rising awareness of sentience and associated concerns for their treatment and protection (Futureye 2018; McGreevy et al. 2019). Therefore, it is reasonable and appropriate to apply the principle to questions of animal sentience (Bradshaw 1999; Brown 2016; Jones 2016; Seth 2016; Ng 2017; Jasiunas 2018; Birch and Browning 2020). While this has been increasingly realised in the scientific and academic milieu, NGOs have also recognised it. The International Fund for Animal Welfare ('IFAW'), for example, cites sentience and the precautionary principle as two of its key principles. Its principle holds that "alternatives to potentially harmful actions must be identified and prioritised, with the burden of proof placed on those proposing a decision that may cause harm, whether by action or inaction" (IFAW 2021).

On this basis, Animal Liberation holds that the adoption of the precautionary principle is in line with other Australian government policy that reflects the Rio definition (Peterson 2006; Weier and Loke 2007) and that there is precedence for applying the precautionary principle approach about sentience (Hurn et al. 2017). To do so, an equivalent revision entails replacing "serious or irreversible damage to the environment" with "serious, negative animal welfare outcomes" (Birch 2017).

Similarly, we note that the extensive use of antibiotics in global animal farming industries will require the robust application of the precautionary principle (van Herten and Bovenkerk 2021). As our recommendation on providing adequate advice aligned with the NSW Government's commitment to developing a crisis plan for intensive livestock business failures will show, it is becoming increasingly apparent that emergency public health measures have a catastrophic impact on animal welfare outcomes.

In sum, we concur with Horton's (1998) interpretation of the principle: "we must act on facts, and on the most accurate interpretation of them, using the best scientific information. That does not mean that we must sit back until we have 100% evidence about everything". While Horton applied this interpretation to public health, principally in instances

50 See the judgment of Justice Preston at the Land and Environment Court of New South Wales relating to Telstra Corporation Limited v Hornsby Shire Council [2006] NSWLEC 133 here: www.caselaw.nsw.gov.au/decision/549f8a6b3004262463ad5606.

R2.

"where the state of the health of the people is at stake" and "the risks can be so high and the costs of corrective action so great that prevention is better than cure", the conclusion remains applicable in the adoption of the principle in our recommended context: "we must analyse the possible benefits and costs of action and inaction [...] even when the scientific knowledge is not conclusive, if the balance of likely costs and benefits justifies it" (Horton 1998)

This recommendation is supported by historical national and emerging international policy directions. In Australia, for example, the precautionary principle was applied in relation to the "cull" of great white sharks using drum-lines (Woolaston and Hamman 2015; Hamman et al. 2016). In[51] January 2014, the Australian Government permitted the killing of this endangered shark species off the Western Australian coast because it was in the "national interest" (Commonwealth of Australia 2014). Following a "rigorous examination" of the proposal, however, the Western Australian Environmental Protection Agency ('EPA') recommended its cancellation (WA EPA 2014; Woolaston and Hamman 2015).

Finally, we recommend the NSW Government consider and apply the findings of an expert working group which advised the UK Government during its consultation of the Animal Welfare (Sentencing and Recognition of Sentience) Bill. This working group explicitly recommended that the precautionary principle should apply *"where there are threats of serious, negative welfare outcomes for a sentient animal, exceptional circumstances and a heavy burden of proof will be required for a claim of public interest to override the animal's interests"* (emphasis added) (Hurn et al. 2017). Critically, this approach applies to a wide range of species, including fish and some invertebrates (Andrews 2011; Jones 2013; Sneddon et al. 2014). This corresponds with our recommendations to earlier stages of the current reform process, particularly that the universality of the general definition of "animal" should facilitate the addition or coverage of otherwise unspecified species as evidence of their sentience emerges (AL 2021).

R3.

THE ADDITION OF PROCEDURES NOT CURRENTLY RESTRICTED UNDER SCHEDULE 1

Under existing provisions, restricted procedures are permitted in prescribed circumstances (DPI 2021a). On the basis that disbudding/dehorning (Sylvester et al. 1998a; Sylvester et al. 1998b; Sutherland et al. 2002), castration (Stafford et al. 2002), ear-tagging (Hayward 2002) and mulesing[52] (Paull et al. 2007; RSPCA Australia 2010) produce significant adverse welfare outcomes, we strongly recommend that these be included in Schedule 1.

51 Drum-lining refers to the process of luring and catching sharks using a barrel (i.e. "the drum") attached to the sea floor and baited with a hook (Hamman et al. 2016). The practice is fatal to sharks and a range of non-target marine species (TSSC 2005). In September 2021, drumlines were deployed across an additional 135 beaches in NSW, making it the largest lethal shark control program deployed in the world (Anon. 2021). Most recently, the highly publicised death of a deep sea swimmer due to a great white shark attack off a NSW beach led to the deployment of drum lines and the subsequent capture of at least two sharks (Ciccarelli 2022).

52 We note that Portfolio Committee No. 4 has carried out an inquiry related to the practice of mulesing in NSW ('Provisions of the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019) (Parliament of NSW 2020a). As such, we reiterate earlier remarks provided in the introduction of this submission regarding the appropriateness of the Standing Committee on State Development undertaking the present inquiry.

R3. Based on the findings on community expectations discussed in subsection 2.2, it is reasonable to conclude that existing disapproval rates of these practices (Coleman and Toukhsati 2006; Coleman et al. 2014) will continue to increase until their perpetuation becomes socially unfeasible (Futureye 2018).

R4.

THE ADDITION OF PROCEDURES NOT CURRENTLY PROHIBITED UNDER SECTION 22

Under existing provisions, procedures listed under section 22 of the draft bill are never permitted (DPI 2021a). We note that the Discussion Paper acknowledged that POCTAA contains offences related to carrying out certain prohibited procedures and places constraints on the circumstances during which they may be performed (DPI 2021a). These were listed under separate provisions (i.e., sections 18, 18A, 19, 19A, 20, 21, 21A, 21B and 21C) of POCTAA. The Discussion Paper proposed the retention of this approach while consolidating the pre existing provisions on the basis that this may aid understanding and limit ambiguity. Appendix A of the Discussion Paper, for example, contained a series of detailed proposed offences and penalties relative to outcomes are that are "deemed to constitute cruelty" (DPI 2021a). Each of these was preceded by the qualifier that they are "unreasonable or unnecessary". Appendix A also contained activities that it proposed to be "deemed to be always cruel, irrespective of their outcome" (emphasis added). These did not contain the same qualifiers attached to the outcomes "deemed to constitute cruelty".

It is our conclusion that continuing to permit procedures that involve considerable pain, whose alleged necessity is often entirely drawn from their commercial benefits or a reluctance to provide adequate resourcing into demonstrating the validity of available alternatives, is antithetical to the spirit of the bill and counters the NSW Government's commitment to "deliver an animal welfare system focused on outcomes that reflects evolving animal welfare science and community expectations" (DPI n.d.-a). Following a brief discussion of procedures or activities we maintain warrant inclusion in section 22 of the draft bill, we will recommend the NSW Government consider approaches taken in other jurisdictions to meet its commitments in achieving positive animal welfare outcomes aligned with sound contemporary science.

While we approve of the recognition of the offences currently listed in section 22 of the draft bill as serious, we query the inconsistencies the selection reveals. As it applies to the NSW Government's commitment to delivering a framework that "reflects evolving animal welfare science" (DPI n.d.-a), we question on what scientific basis it may be legal to mutilate an animal. Why, for example, is docking the tails of dogs illegal under section 12 of POCTAA and Schedule 1 of the draft bill while docking the tails of farmed animals is accorded legality, and its perpetrators offered immunity under law? Similarly, while the use of sodium monofluoroacetate ('1080 poison') to kill dingoes[53] remains legal,

53 A series of pioneering studies led by UNSW researchers have found, through the genetic ancestry and DNA sampling of canines killed during 'wild dog' management programs, that almost all 'wild dogs' in NSW are either dingoes or dingo-dominant hybrids (Cairns et al. 2020; Cairns et al. 2021). Furthermore, nearly one in four of the animals sampled were considered pure dingoes (Salleh 2021). These findings led researchers to conclude that the concept of a 'wild dog' in NSW is largely a "myth" (Cairns et al. 2021) and that activities described as 'wild dog' management are inaccurate on the basis that "we are just killing dingoes" (Landow 2019).

R4. killing domestic canines with 1080 poison remains illegal, despite the two being of the same species with identical capacities to suffer.

We note approaches taken in other jurisdictions. For example, "mutilation" is defined under British legislation as a "prohibited procedure" that "involves interference with the sensitive tissues or bone structure of an animal otherwise than for the purposes of its medical treatment" (FAWC 2011a).[54] The precursor to the UK's Animal Welfare Committee ('AWC'), which advises the government on issues related to farmed animal welfare (UK Government n.d.), explains that farmers should reduce the current reliance on mutilations and their practice "should not be considered without strong justification" (FAWC 2008). Ultimately, it maintains that "a system of farming should not have a dependency on [inbuilt and sector] specific mutilations" (FAWC 2016).

While we support the inclusion of surgical artificial insemination ('SAI') on a dog under section 22 of the draft bill, we recommend that the bill similarly prohibit similar procedures. For example, this should expand to include transcervical insemination ('TCI'), noting that the prohibition of AI in the UK in 2019 led to the adoption of TCI (Hyatt 2019). Similarly, the NSW Government must ensure that the prohibition of SAI under section 22 applies to all canines. This must include greyhounds and will necessitate reform to GWIC's greyhound welfare COP that currently includes SAI as a permissible procedure under Standards on the proviso that it is carried out by a veterinarian or a registered artificial insemination technician and is accompanied by the use of general anaesthetic (NSW Government 2020b). This is particularly important given the Minister for Agriculture's recent assurances to greyhound racing industry members that the prohibition would be entirely expunged from the draft bill (Davis 2022).

We recommend that the NSW Government follow an organised phase-out of sodium mono-fluoroacetate, commonly known as '1080 poison', with a prohibition on its use under section 22 of the draft bill. Scientific evidence demonstrates that its mode of action and symptomatology lead to death are indicative of severe suffering (Sherley 2007; Sharp and Saunders 2011; Marks 2013), and there are increasing community demands for its prohibition on this basis (McGeary 2005; Allen 2006; Fisher and Lee 2006; Fitzgerald 2006; Meurk 2011; Warburton et al. 2021).[55] A review of Australian attitudes to poisoning found it to be "one of the least publicly acceptable forms of pest control" and "even theoretical 'humane poisons' do not rate particularly highly" (Fitzgerald 2009). Surveys between 1994 and 2005 have shown decreasing acceptance of poisons as control tools in western societies (Fitzgerald 2009; Green and Rohan 2012). Similar reviews of New Zealand literature reached the same conclusion, advising that poisons "fail to satisfy any of the three key criteria that influence acceptability" (i.e., they are not regarded as humane, specific or safe) (Fraser 2006). These conclusions were supported by a consensus meeting of experts, including Australian researchers in the fields of compassionate conservation and animal welfare, who concluded that wildlife control measures should minimise harm and adverse animal welfare outcomes (Dubois et al. 2017). These conclusions were subsequently reiterated in further academic reports on

54 See the Animal Welfare Act 2006 (England and Wales) and the Animal Health and Welfare (Scotland) Act 2006.

55 This is reflected in community attitudes in New Zealand, one of the few remaining countries where it remains legal to use 1080 poison (Sheppard and Urquhart 1991; Fitzgerald et al. 1996; Fitzgerald et al. 1994; Wilkinson and Fitzgerald 1998; Fraser 2001; Riethmuller et al. 2005; Fraser 2006; Weaver 2006; Green and Rohan 2012; Morris 2020; Ross and Eason 2021).

R4.

harm minimisation principles in wildlife management (Wallach et al. 2018). As such, this recommendation is supported by reference to the NSW Government's commitment to reflecting evolving animal welfare science and community expectations in its animal welfare framework (DPI n.d.-a).

We maintain that these incompatible provisions constitute legislated speciesism, defined as "the widespread discrimination that is practised by man [sic] against other species" (Ryder 1975), of providing legal protection from certain forms of harm to some animals while denying it to others who would suffer commensurate impacts on their welfare. On this basis, we advise greater parity of treatment between farmed, companion and wild animals including native species in the draft bill. As such, we strongly recommend that the prohibited procedures contained in section 22 be expanded to include the farming of ducks without access to open water, the routine trimming of hens beaks, mulesing and the killing of kangaroo joeys and piglets with blunt-force trauma.

R5.

THE NSW GOVERNMENT SHOULD REMOVE VARIOUS EXEMPTIONS CONTAINED WITHIN THE DRAFT BILL

Animal Liberation *does not* support the following exemptions contained within the draft bill:

- ☒ **the exclusion of birds from the requirement to alleviate harm to animals who are struck by vehicles:** this exclusion, contained within section 29 of the draft bill, should be removed;

- ☒ **the exclusion of non-domestic animals from the poisoning offence contained in section 30 of the draft bill:** this offence must be broadened to apply to all animals. As such, the reference to "domestic" in this section of the draft bill should be removed;

- ☒ **the exemption of rodeos from the prohibition on animal fighting in sections 32(2)(a) and 32(3) should be removed from the draft bill.**

- ☒ **the proposed offences involving "animal cruelty material" should be properly defined or removed:** Animal Liberation does not support the proposed offences involving "animal cruelty material" under Division 5, Part 4 of the draft bill. In its current wording, these provisions are sweeping and could potentially be applied to materials intended to facilitate education or awareness-raising regarding animal cruelty. We note that such issues are considered a public interest.[56]

56 The justification for animal welfare laws being in the public interest has long been established (White 2003). For example, the United Kingdom's equivalent legislation has long held that animal welfare is a public good and animals should be protected in the public interest (Nurse 2016). In Australia, this is amply evidenced in the aftermath of exposés revealing high-profile animal cruelty cases (Chen 2016) or public consultation processes regarding standard-setting relevant to animal welfare (AHA 2018). Over 165,000 submissions were made to Animal Health Australia ('AHA'), for example, in response to its draft Australian Animal Welfare Standards and Guidelines for Poultry (S&Gs) during the 90-day public consultation period (AHA 2018). At the time, this represented "the largest response to a public consultation" (ibid). Similarly, in response to the broadcast of footage of slaughterhouse practices in Jakarta that ultimately led to the temporary cessation of the live export trade to Indonesia in late 2011, the websites of several activist organisations crashed "due to dramatic surges in traffic" (AAP 2011; Chen 2016). However, as profitable industries are the principal goal of the regulator, the objective of preserving the public interest of animal welfare is of secondary concern (Mundt 2015).

R6.

THE BREEDING OF COMPANION ANIMALS MUST BE APPROPRIATELY ADDRESSED PER COMMITMENTS MADE IN THE NSW ANIMAL WELFARE ACTION PLAN

Schedule 3 of the EP&A Regulations lists cattle, horses, dairies, pig farms, poultry farms, saleyards, and slaughterhouses as examples of intensive livestock agriculture. It fails, however, to include companion animals or other species raised in emerging intensive industries. The latter include duck, goat, camel, emu and lobster farms.

At present, DA's for commercial and intensive dog breeding are submitted under the guise of 'Animal Training Or Boarding Establishment' despite the fact there is usually no 'boarding' or 'training' component and which would typically correlate with the NSW Animal Welfare Code of Practice No 5 - Dogs and cats in animal boarding establishments (DPI n.d.-f). However, the real motivation for these DA's submitted as 'Animal Training Or Boarding Establishment' is for commercial and intensive dog breeding correlating with the Animal Welfare Code of Practice - Breeding dogs and cats (DPI 2021c). Worse still, while compliance action has occurred following the establishment of such ventures, DA's are being lodged in many instances without consent, and consent authorities are granting "trial" periods of approval.

Under designated development, environmental impact is rightfully considered to be potentially high and therefore there is a greater level of scrutiny as part of the assessment process than would normally be the case. However, the same consideration is ignored when assessing and applying animal welfare and well-being consent conditions.

Companion canines (*Canis familiaris*) are an example of this in practice. Often, companion animals fall through the cracks of animal welfare legislation at various junctures. Those who are impounded are subject to oversight by the Office of Local Government ('OLG') and individual local government councils who are self-governing. As such, they do not necessarily receive the same level of care or oversight as they would receive in an RSPCA shelter or an independently managed shelter.

Animal Liberation has significant concerns related to the failure to adequately address companion animals' breeding. Such activities must be explicitly identified as a "commercial and intensive activity" under section 66 of the draft bill. Failing to do so facilitates inadequate oversight of these operations.

R7.

THE NSW GOVERNMENT SHOULD ESTABLISH AN INDEPENDENT OFFICE OF ANIMAL WELFARE ('IOAW')

The regulatory and governance issues demonstrated and discussed throughout this submission have significant implications for the level of protection imparted to animals under law (Guiffre and Margo 2015). A conflict of interest in the bodies and departments responsible for promoting both industry and animal welfare interests, the domination of industry in standards-setting processes and the reluctance to adopt measures aligned with contemporary animal welfare science have

R7.

resulted in a framework that structurally fails to protect animals adequately. Establishing an Independent Office of Animal Welfare ('IOAW') is an essential step in resolving many of the issues outlined above and is a viable approach to ensuring that commitments made by the NSW Government are met.

Though industry interests have publicly opposed the establishment of an IOAW[57], this recommendation has a basis in the findings of several government reports and inquiries. The concept of an IOAW has a long history at both state and national levels (Giuffre and Margo 2015; Walker-Munro 2015; Ford 2016; PC 2016). As such, the impetus for establishing an IOAW is not new (Ellis 2013b; Goodfellow 2016; White 2018).

We strongly recommend this Committee considers the recommendations made by the Upper House committee inquiry into animal cruelty laws in 2020. The committee's final report recommended the establishment of an independent statutory body that it refers to as an Independent Office of Animal Protection ('IOAP') (Parliament of NSW 2020b: 60). The NSW Government's response to the 2020 inquiry into animal cruelty laws final report did not support this recommendation. This refusal was made on the basis that the Department considers the enforcement of existing animal welfare laws to be administered through "a robust framework" (NSW Government 2020c). We note that this response is echoed in the consultation outcomes report provided by the Department in relation to recommendations advocating the establishment of an IOAW in submissions to the Discussion Paper (DPI 2021b). Our submission to the Discussion Paper (AL 2021) and earlier subsections of this submission have comprehensively challenged this conclusion.

The committee's final report noted that a large number of submissions, including Animal Liberation's, had "responded positively to the call for the establishment of an independent office to oversee animal welfare in New South Wales" (Parliament of NSW 2020b: 55). The report stated that an IOAW or an IOAP[58] would address long-standing concerns, outlined elsewhere in this submission, about conflicts of interest between the authorised enforcement agencies under the NSW animal welfare framework (Parliament of NSW 2020b: 60). This conclusion is supported by the findings of the Productivity Commission's ('PC') report on the regulation of Australian agriculture (PC 2016). After 12 months of operation under the new framework, we recommend that the annual POCTAA review expands its TOR to review the success of existing ACOs with the option to remove their prosecution powers if this review fails to find evidence of substantial improvements in animal welfare outcomes.

Finally, we strongly urge the NSW Government to unanimously support the Greens NSW notice of intention to introduce a Bill to establish an Independent Office of Animal Welfare. When the government begins the process of appropriately considering the establishment of an IOAW, we recommend that the draft bill reinstate previous provisions that enable the appointment of special constables (Chen 2016).

57 For example, see the transcript of the 2020 hearings of the Select Committee on Animal Cruelty Laws in New South Wales. Note, in particular, comments made by representatives of Egg Farmers of Australia and the NSW Farmers Association. Available here: https://www.parliament.nsw.gov.au/lcdocs/transcripts/2293/Transcript%20-%2013%20February%202020%20-%20CORRECTED.pdf.

58 The two proposed agencies are interchangeable in purpose.

R8.

THE NSW GOVERNMENT MUST ADDRESS INCONSISTENCIES IN THE SELF-REGULATION OF ANIMAL WELFARE

Animal Liberation notes with concern the government's propensity to establish or strengthen self-regulating bodies in response to public concerns following exposed incidents of animal cruelty that have emanated from particular industries or activities. This government approach only reinforces widespread public concerns about the differential and unfair treatment of animals according to who you are or the economic value of animals as 'property', or the relationship with the government. We strongly contend that self-regulation is a highly conflicted way to administer or manage animal welfare, especially when the platform is founded on already weak, outdated and inadequate laws. Animal welfare self-regulation frequently leads to inconsistency and varying degrees of inequality for the animals we are supposed to protect.

One obvious example of the inconsistency with government legislation and policy, even with the context of self-regulation, is that animal welfare is regulated under the guise of the Greyhound Welfare and Integrity Commission ('GWIC'). In contrast, the animal welfare component of the NSW horseracing industry still falls under Racing NSW ('RNSW'). Further, despite GWIC and the scientific fact that greyhounds are dogs, their welfare and wellbeing are administered by a series of self-regulated rules, regulations and the NSW Greyhound Welfare Code of Practice (NSW Government 2020b). This COP, which we regard as unfit for purpose, came into effect on 1 January 2021 and allows NSW greyhounds to be housed in non-compliant greyhound kennels up to 31 December 2030 to allow GRNSW participants time to meet the new standards (NSW Government 2020d). At the end of this period, participants can even apply for additional time to meet the standards detailed in Standard 5.9 relating to "housing areas and space requirements" (NSW Government n.d.). In complete contrast, this would be unacceptable for dogs in council pounds or puppy factories.

It is also possible that, while the Discussion Paper that informed the contents of the draft bill claimed consistency with the Five Freedoms (DPI 2021a), this example of self-regulation is inconsistent with one of its key tenets (i.e., the provision of "sufficient space") (RSPCA Australia 2021e). We note, finally, that the Commonwealth-commissioned study discussed in section 2 advises that while industry will continue to "insist [that] self-regulation is sufficient", it predicts that this will become "untenable" as community expectations continue to demand greater protections for animals under law (Futureye 2018: 26).

R9.

OTHER RECOMMENDATIONS

☑ **the NSW Government should incorporate the offence of pig-dogging in Part 4, Division 2 of the draft bill**

We recommend the NSW Government incorporate the offence of pig-dogging under Part 4, Division 2 of the draft bill and suggest

R9.

consideration of section 17 of the ACT's *Animal Welfare Act 1992* in doing so;

☑ **the NSW Government should make documents that informed the development of the draft bill, including the Issues and Discussion Papers, available to the public**

Access to documents prepared and published by the Department relating to previous stages of this reform process should be available online. We note, for example, that the Issues Paper has been removed from the Department's website and is no longer available online. Restricting access to documents that the public could refer to during the consultation period of the related inquiries necessarily limits the responses and data available for those wishing to provide the Committee with a formal submission;

☑ **the capacity to rescue animals locked in vehicles or inappropriately transported should be added to the draft bill**

The capacity to rescue should be added to the draft bill in instances where animals are exposed to extreme weather, including those exposed during motor vehicle or truck transport, when racing, being used for labour or when tethered. We note, for instance, that racing greyhounds can still be forced to run at racing and trial events at excessive speeds in temperatures up to 38 degrees celsius. We recommend that the NSW Government consider section 109A of the ACT's *Animal Welfare Act 1992* in this regard;

☑ **the NSW Government should consider previous and forthcoming Parliamentary inquiry findings, recommendations and other relevant reports**

We have previously noted the relevancy of past and upcoming inquiries conducted by Portfolio Committee No. 4. We recommend that the NSW Government review these inquiries' findings and final reports, including those currently open for submission. An example of the latter of relevance to the contents of the draft bill is the inquiry into the use of primates and other animals in medical research in New South Wales (Parliament of NSW n.d.-c), noting that section 4(c)(i) contains provisions relating to a licensing and regulatory framework to oversee the use of animals for research purposes. The findings of the forthcoming report of the inquiry into ACOs under POCTAA will also be of general significance to the present inquiry (Parliament of NSW n.d.-d).

Finally, we recommend the NSW Government review and consider the findings of other related landmark reports. This should include the Commonwealth-commissioned report entitled Australia's Shifting Mindset of Farm Animal Welfare (Futureye 2018) and the PC report into the regulation of Australian agriculture (PC 2016). The PC regulation of the Australian agriculture report contained several recommendations about measures to improve standard-setting and regulations for farmed animals that the NSW Government should consider (PC 2016; Bettles 2017). The RSPCA

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responded to the report, noting that it identified "the failure of our current standard-setting processes to properly consider independent scientific advice and community expectations" and detailed "widely-held concerns about the lack of transparency and conflicts of interest in the decision-making process" (RSPCA Australia 2017b);

☑ **the NSW government should review the regulatory approach to monitoring and enforcement procedures**

Per the recommendations of the PC regulation of Australian agriculture report outlined above, this review should ensure that: a) there is "separation between agriculture policy matters and farm animal welfare monitoring and enforcement", b) that regulations facilitate "a transparent process [...] for publicly reporting on monitoring and enforcement activities" and c) there is "adequate resourcing [...] to support an effective discharge of monitoring and enforcement activities" (PC 2016). We recommend that the NSW Government undertake such reviews on a 12-monthly basis and include consideration of all auxiliary or subservient regulatory instruments, including COPS;

☑ **the NSW Government should provide adequate advice aligned with its commitment to develop a crisis plan for intensive livestock business failures, including biodiversity, disease or climate-related emergencies where animal welfare and wellbeing are predominant considerations**

Recent disasters, including the 2019-20 bushfires and the March 2022 floods, have made the vulnerability of animals to disasters acutely apparent (Best 2021). As the increasing frequency and severity of these events are being influenced by the ongoing climate crisis, improvements to international emergency management protocols elsewhere in the world have been made (Travers et al. 2017). The status of animals as property, discussed elsewhere in this submission, makes them legally inferior to people, and they are generally afforded a corresponding lower priority in emergency response management plans as a result (Best 2021). For example, although some jurisdictions, including Australia (Agriculture Victoria 2019), have begun integrating animals in disaster management, their interests frequently remain secondary to those of humans (Best 2021) and distinct categories of animals are "differentially provided opportunities for rescue or escape" (Irvine 2009).[59] It follows, therefore, that emergency planning frameworks are negligent if they exclude animals confined and dependent on automated food systems in intensive facilities (ibid). Similarly, critics have maintained that the omission of companion animals from disaster management plans disregards their intrinsic value and corresponding entitlement to "care and respect in their own right" (White 2012). Analogous arguments have been made regarding wildlife (Lovvorn 2016).

59 In response to the recommendations of the 2009 Victorian Bushfires Royal Commission, for example, the Victorian Emergency Animal Welfare Plan ('VEAWP') was introduced (Agriculture Victoria 2019). However, despite being the first significant attempt to safeguard animals in disasters in Australia (White 2012), the instrument is considered "highly anthropocentric" (Best 2021) as its first guiding principle is that the "protection and preservation of human life is paramount" (Agriculture Victoria 2019: 6).

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We strongly recommend the NSW Government investigate, prepare and provide industry and public education, including emergency preparedness measures, for the extensive climate-related complications in order to to mitigate the predicted impacts of the climate crisis (RSPCA Australia 2020e). These measures should be inclusive of companion (Thompson 2013), entertainment (Rebbeck 2013), wild (van Eeden et al. 2020) and farmed (Lacetera 2019) animals. We note that the preventative killing of healthy animals has become an increasingly common response in zoonotic disease control (Degeling et al. 2016). Critically, as the animal agriculture sector is responsible for a substantial percentage of greenhouse gas ('GHG') emissions (Vermeulen et al. 2012) and finite resource exploitation (Shiklomanov and Rodda 2004; Ramankutty et al. 2008), this directly implicates the production of farmed animals. While this further implicates the Department's conflicts of interest in promoting the economic interests of the animal agriculture sector, detailed above (Goodfellow 2016; Morton et al. 2020), it necessitates urgent and proactive responses from the NSW Government.

We recommend that the Committee consider the findings of the several historic and ongoing reports and inquiries. For example, the 2011 Queensland Flood Commission of Enquiry, the 2009 Victorian Bushfires Royal Commission, and the 2013 Tasmania Bushfires Inquiry have included references to the management of animals in catastrophes and recommendations on necessary improvements to emergency preparedness (Taylor et al. 2015). The exceptionally high rates of companion animal ownership in Australia (AHA 2019) and the well-documented impacts of grief at animal loss (Zottarelli 2010; Hall et at. 2004; Thompson 2013) has generated calls for the consideration of animals "at all stages of emergency preparedness and planning" (Taylor et al. 2015). As it applies to the predicted impacts of the climate crisis, we recommend the Committee consider the findings of the ongoing inquiry into food production and supply in NSW currently being undertaken by the Legislative Assembly Committee on Environment and Planning (Parliament of NSW n.d.-d).

Similarly, we recommend the NSW Government review a range of relevant reports, including those in response to a comprehensive review of the potentially catastrophic animal welfare impacts of the SARS-CoV-2 ('COVID 19') pandemic. Globally, the world has been crippled by the COVID-19 pandemic, which many eminent scientists believe originated in "wet markets" (Shreedhar and Mourato 2020). COVID-19 has been described as a "perfect example" of a zoonosis spillover from wildlife that subsequently became established in human populations (Roche et al. 2020). Though this type of event has happened many times in human history (Lloyd-Smith et al. 2009), the connectivity of current human populations, the globalisation of trade networks and high rates or urbanisation mean that such a disease could spread at an accelerated pace post-spillover (Saker et a. 2004; Shrestha et al. 2020; Sigler et al. 2021).

While much focus has been on the workforce (Risse and Jackson 2021) and food security impacts (Asher 2021; Galanakis et al. 2021; McKay 2021) of COVID-19, associated supply chain disruptions have been described as "unprecedented" by the Australian chicken

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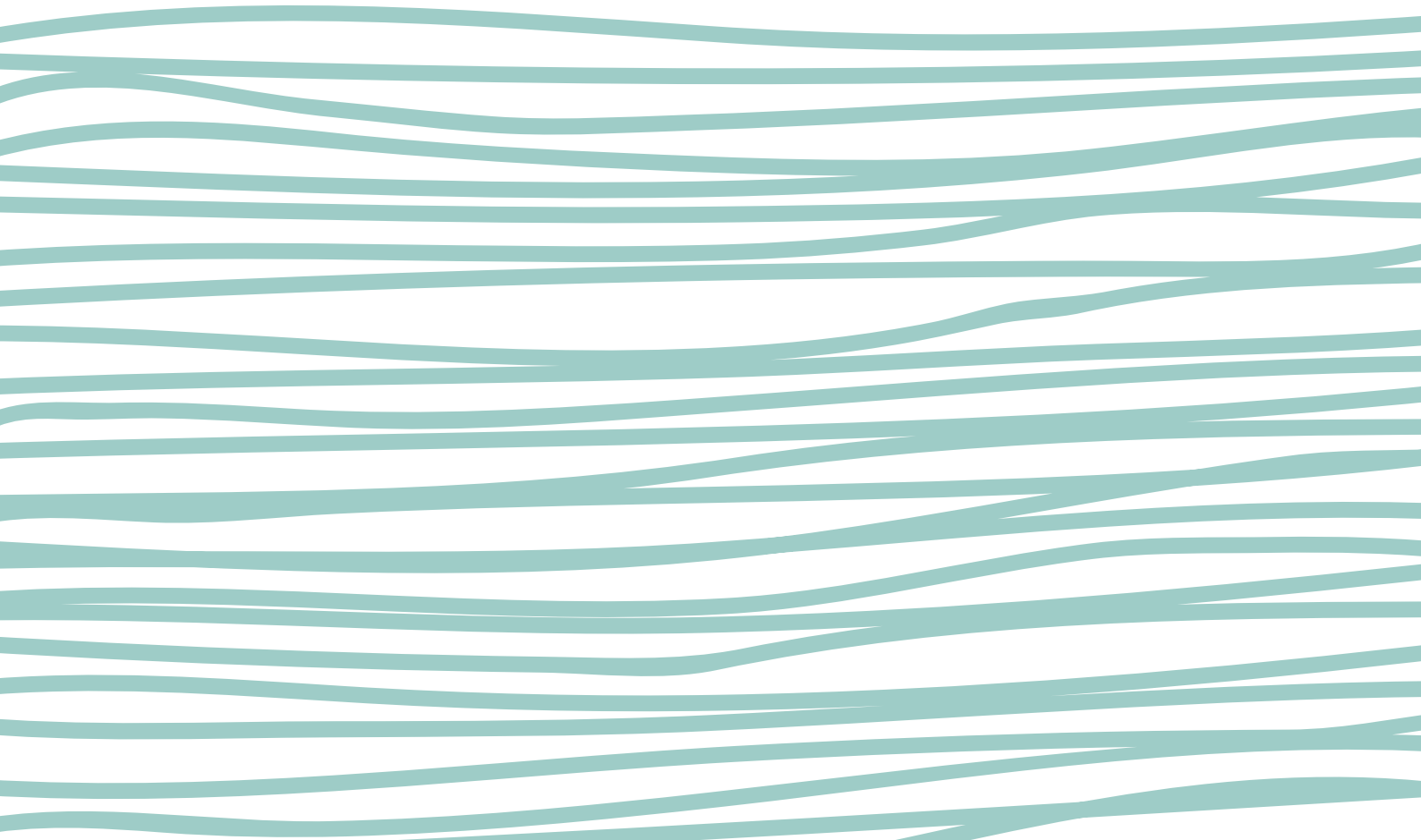
industry (May 2022) and are a major concern for other intensive animal production industries (Gortázar and de la Fuente 2020). This is primarily due to personnel impacts, including staff shortages due to movement restrictions and furloughs, that have reduced the sector's ability to maintain facilities and impacted processing capacities (FAO 2020c). This has subsequently caused additional overcrowding and "a backlog of animals at farms" that would have otherwise been slaughtered (Baptista et al. 2021). Though similar examples have been noted in other intensive animal production industries (Marchant-Forde and Boyle 2020), this is a particularly profound problem for chicken welfare due to the rapid rate at which they grow (RSPCA Australia 2022c). Therefore, a lockdown or staff shortage period of just a few weeks represents the production time and risks severe welfare issues (AWC 2020) by placing additional stress on stocking densities and generating significant welfare issues (Julian 1998; Bessei 2006). In this regard, we note recent documents submitted by one of Australia's largest vertically-integrated chicken meat production companies (Baiada Group 2017; ACMF 2020a; PSA Consulting 2021), pursuing the development of a breeding facility in Grenfell (NSW) that failed to adequately address or provide sufficient detail regarding either mitigation or disposal methods in the event of an event requiring mass euthanasia (AL 2022b). This demonstrates the lack of adequate disaster preparedness and suggests an urgent need for government intervention in securing proactive emergency management planning.

SECTION FIVE

CONCLUSION



SECTION FIVE

CONCLUSION

Animal Liberation appreciates and welcomes the opportunity and invitation to provide this submission in response to the Standing Committee on State Development's inquiry into animal welfare policy in NSW.

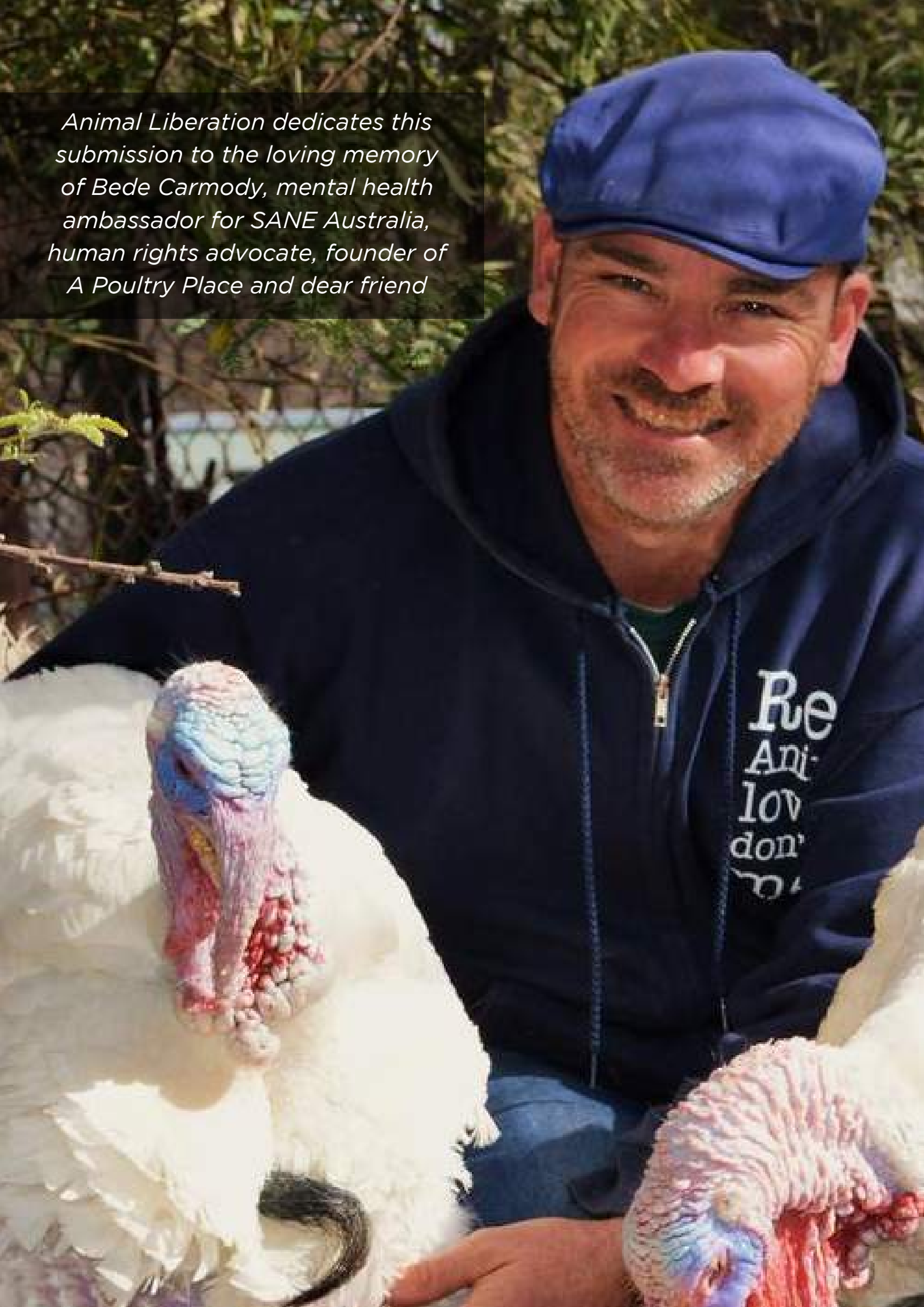
Our submission has provided the Committee with a range of critical considerations and corresponding recommendations.

In sum, the effectiveness of animal welfare regulation "depends on the perceived legal status" of animals and "the recognition of sentience" (Manning et al. 2021). Acts of animal cruelty cause significant harm to animals and, as such, animals should be afforded protections that are similar to those granted to other victims of crime (Moore 2005).

Our submission has demonstrated that the standard regulatory approach, replicated under the provisions of the draft bill, is undermined by an intrinsic irrationality (White 2007). This is notably so in relation to the ongoing insistence on treating farmed and companion animals in contradictory and illogically different ways, despite each category being indisputably sentient (DeGrazia 2017).

Though Animal Liberation follows the principle that a reliance on sentience as a tool to measure or determine the moral or legal obligations of humans to other animals produces speciesism (Singer 1975; Chen 2016), and thereby affects decisions about which animals are protected (Waldau 2016), the absence of an explicit recognition of animal sentience in the draft bill fails to adhere to global best practice. As such, it is our conclusion that the draft bill in its current incarnation fails to meet a key objective of the Animal Welfare Action Plan ("ensure sound research and scientific practices are used to develop policy and legislation") (DPI n.d.-b: 1).

Animal Liberation notes that large numbers of animals continue to rely on their welfare and wellbeing needs being met by various levels of government itself, including government departments, agencies and local government councils (Taylor et al. 2015). Local government council pounds and council managed saleyards clearly illustrate this observation, and our strong view that the application of animal cruelty and protection laws must apply equally and consistently, without bias or conflict, in all cases where potential animal suffering or cruelty can and frequently does occur. The origins of animal suffering and cruelty, or the basis and responsibility of oversight (public, industry or government) should not be a determining factor with the application of consistent and equitable laws to protect animals and prevent cruelty.


Animal Liberation dedicates this submission to the loving memory of Bede Carmody, mental health ambassador for SANE Australia, human rights advocate, founder of A Poultry Place and dear friend

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ADDENDUM TO ANIMAL WELFARE POLICY IN NSW

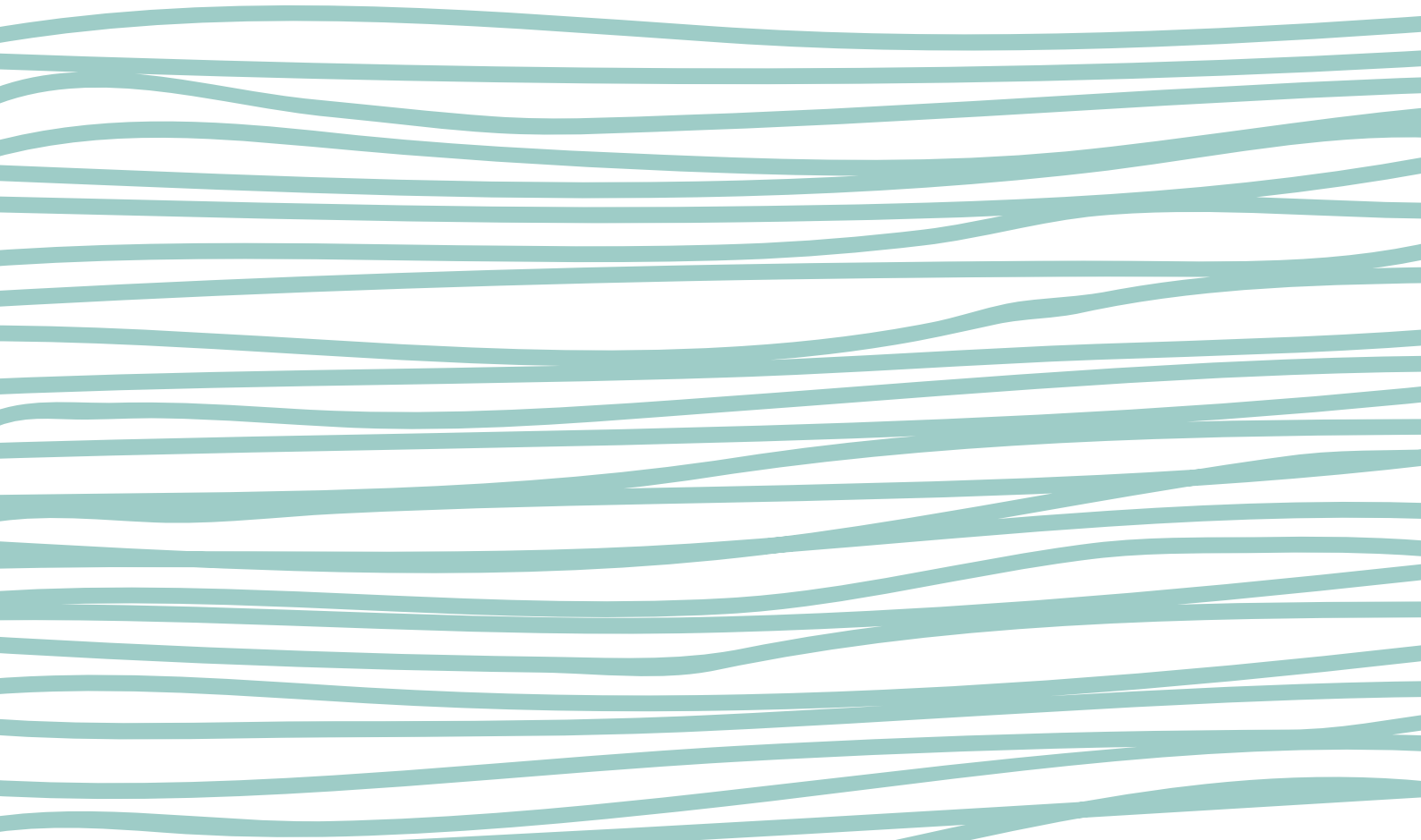
AN ANIMAL LIBERATION SUBMISSION

TO THE STANDING COMMITTEE ON STATE DEVELOPMENT

AL.ORG.AU

ADDENDUM ONE

PETITION: INDEPENDENT OFFICE OF ANIMAL WELFARE ('IOAW')



ADDENDUM 1

This petition is available via **www.al.org.au/ioaw**

Animal Liberation

What is an Independent Office of Animal Welfare?

While Animal Liberation's goal is to end all animal exploitation, we understand that this takes time and will happen with slow transitions. In the meantime, we need to reduce the suffering of all animals who are used and abused for human gain.

The introduction of an Independent Office of Animal Welfare will mean a new - and most importantly, impartial - department will advise, consult, investigate, lead, and coordinate animal welfare policies at a country, state, territory, and community level. They will have the power to shape policies and make decisions with the animals' interests at heart.

Our current system is failing animals, and this desperately needs to change.

Why do we need an Independent Office of Animal Welfare?

Farmed animals are excluded from current laws.

Existing national frameworks of animal welfare law continue to excuse acts of outrageous cruelty inflicted on farmed animals in Australia. Right now, the system is based on a complete conflict of interest. The welfare of the animals is left up to the same people who profit off of their existence, and economic interests always take preference over animal welfare.

What is legal?

Below is a summary of the standard and legal practises used in farming these six common animals in Australia. For more, please visit the issues page.

Chickens

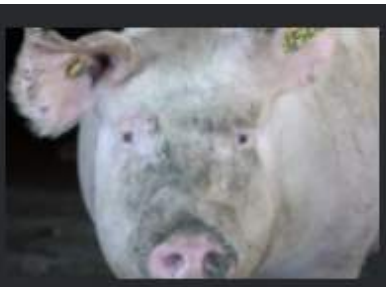
Broiler chickens are kept confined to sheds with thousands of others, unable to exhibit their natural behaviours. They live amongst their waste and will never smell fresh air or feel sunlight on their skin. RSPCA approved chicken farms give chickens a perch and have lower stocking densities, however, the birds still suffer.

All chickens are killed at just 6-8 weeks old.

Cattle

Cattle used for beef can be dehorned, branded, castrated, and artificially inseminated without anesthesia. Approximately 35% are moved to feedlots, where they are kept confined to barren (and often muddy) pens for months. Unable to graze they are feed an unnatural diet of grains, which can cause illness in cattle.

Cows raised for beef are killed at just 18 months old.



Pigs

Newborn piglets can legally have their teeth clipped and tails cut off without anaesthetic or pain relief. Once they are weaned, they are moved to crowded grower pens. Breeding females are kept confined to sow stalls and farrowing crates. Boars used for semen collection are confined to stalls. All unable to exhibit their natural behaviours for their entire lives.

Pigs raised for food, are gassed alive or stunned before having their throats slit, at just 6 months old.

Sheep

Lambs can be castrated, have their tails cut off and are mulesed, all without pain relief. Sheep have been selectively bred to give birth to more than one lamb, despite knowing that mothers are unable to care for three babies, which causes them extreme stress. They are often given no shelter and are left to endure extreme weather. Sheep are typically made to give birth during winter, as it lowers the cost of feed for the farmer. An estimated 15 million lambs die every year due to exposure and malnutrition. Like cows, sheep can also be "finished" on feedlots, which is stressful and can cause illness.

Lambs are sent to slaughter at just 6 months old.

Hens

Hens in the egg industry have their beaks seared off and are incarcerated in bare cages for the entirety of their short lives, afforded only a piece of paper of space each, never knowing how it feels to spread their wings or even see sunlight; unprofitable newborns are literally blended alive, suffocated, or gassed en masse.

Dairy Cows

The dairy industry exploits mothers for their milk. A dairy cow is artificially inseminated and after a 9-month pregnancy, has her baby taken away in less than 24 hours. She is then repeatedly milked, while her baby is either killed, grown for veal or beef, or enters the dairy cycle.

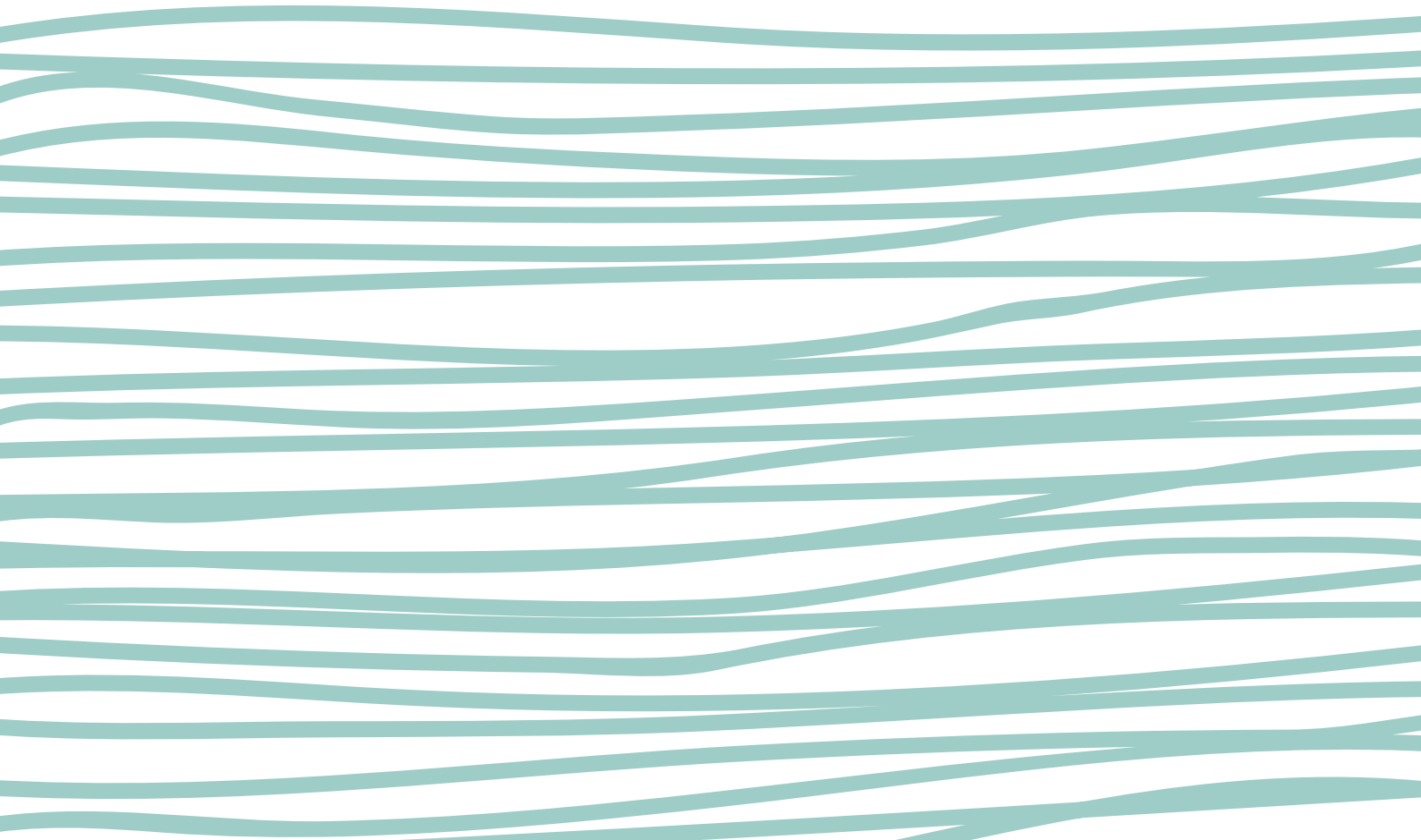
When she is no longer able to produce babies or milk, she is sent to the slaughterhouse - often at 6 years old.

Learn More

At the time of publication, this petition had 26,057 signatories.

ADDENDUM TWO

PETITION: TAKE ACTION FOR ANIMALS IN NSW



ADDENDUM 2

This petition is available via **www.al.org.au/petition/nsw-animal-welfare-policy**

Animal Liberation

90% of Australians say animal welfare laws are broken - help make a difference today.

Petition closes at 5 PM, Monday 28 February 2022.

Important note: By signing this petition, you are agreeing with Animal Liberation's recommendations and agree to be included as a supporter of Animal Liberation's formal submission in response to the NSW Government's Animal welfare policy in New South Wales Inquiry and consideration of the draft Animal Welfare bill 2022, intended to replace the Prevention of Cruelty to Animals Act 1979.

In 2018, the NSW State Government released its 'Animal Welfare Action Plan' with a promise to modernise the forty-year-old framework underpinning the protection of animals in NSW, under the Prevention of Cruelty to Animals Act 1979. In the process, it committed to improving compliance and enforcement, applying contemporary

scientific evidence to ensure positive animal welfare outcomes, and listening to feedback from the community.

After two stages of community consultation, the Animal Welfare Bill 2022, has been prepared to replace the existing animal welfare and protection legislation in NSW. Despite government rhetoric and promises, nothing has changed and the draft Bill offers almost no meaningful change to ensure stronger animal protection. Animals will remain defenceless in the face of the law. And they need us now more than ever.

In homes, exploitative industries, and from the farm to the forest, all animals are facing growing threats. NSW has the highest number of chicken farms in Australia and the number of animals crammed in food production and commercial sheds continues to increase. The number of pigs confined in NSW has increased by 45% in the past decade. The majority of commercial duck farms are located in NSW. In vast sheds, ducks are confined to large, dry sheds and refused access to open water.

NSW has pushed around 1,000 species and ecological communities to the brink of extinction. Despite this damning figure, their habitat is bulldozed to make way for intensive farms and expanding human developments. Our homes are where theirs once were.

Meanwhile, others face increasing risk from bushfires and floods caused by the climate change our actions and diets produce. Those that survive are seen through shotgun sights. Iconic kangaroos are still hunted for their meat and skins or are gunned down as "pests".

In NSW, puppy factories continue to thrive, and our inadequate and antiquated pound and shelter system continues to fail thousands of healthy companion animals every year. Other species continue to suffer abhorrent cruelty and harm from experimentation or commercial exploitation by entertainment industries in racing, circuses, and zoos.

Our state is hell on earth for animals.

When the NSW Government announced a series of reforms that implicitly recognised the failures and shortcomings in the current animal welfare framework and acknowledged that there is an urgent need for modernisation, we provided some basic recommendations to improve the fate of all animals across the State.

We recommended:

- any emerging law must contain explicit recognition of animal sentience - failing to do so reflects a structural flaw that disregards modern science
- the proposed law must prevent the differential treatment of animals based on their species or their intended purpose - the law must apply equally without prejudice or discrimination
- the animal welfare framework must be appropriately and transparently enforced - conflicts of interest must be abolished so that the government department responsible for overseeing animal protection isn't influenced by interests that rely on their commercial production
- legislation must be consistent and adhere to contemporary and emerging community expectations - Australians expect and deserve stronger legal protections for all animals
- an Independent Office of Animal Welfare must be established in order to ensure consistency and accountability.

The basic requirements to make the framework functional and ensure meaningful protections for animals are neither encoded under law or included. Unlike other recent reforms in other Australian states, NSW has refused to listen to the community.

- the new law fails to recognise sentience - instead, it claims that merely acknowledging animals experience pain is sufficient to meet scientific evidence, international standards or community expectations
- the new framework continues to permit inadequate and weak codes of practice - this reliance legalises acts and practices that would otherwise constitute cruelty, including routine husbandry procedures without pain relief and the intensive confinement of animals in crates and cages
- the regulation and enforcement of animal protection remains under the control of a charity - no other public interest law is overseen by an underfunded charitable organisation

The NSW Government has simply rewritten and compressed an outdated law so that the people inflicting cruelty remain protected, instead of the animals they harm. It isn't worth the paper it was written on.

Help us help animals by signing the petition.

If you'd prefer to, you can lodge a personal submission to the State Development Committee's Inquiry 'Animal welfare policy in New South Wales', incorporating the review of the draft Animal Welfare bill 2022, either by uploading on the government website or sending a direct emailing.

PHOTO: JO-ANNE MCARTHUR / WEANIMALS

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