

Submission to the Victorian Legislative Council's  
**Economy & Infrastructure Committee**

**Inquiry on the Impacts of Animal  
Rights Activism on Victorian  
Agriculture**

As provided to the Senate Legal & Constitutional Affairs Committee



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*We acknowledge the  
**Traditional Owners** of  
country throughout  
Australia and recognise  
their **continuing  
connection** to land,  
waters and culture.*

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



## S1. EXECUTIVE SUMMARY

- 1.1** The Legislative Council’s Economy and Infrastructure Standing Committee of the Parliament of Victoria has sought public submissions on the present Inquiry on the Impacts of Animal Rights Activism on Victorian Agriculture (hereafter, “the Inquiry”). Animal Liberation welcomes the opportunity to provide commentary and does so in the following submission, hereby provided for the Committee’s consideration.
- 1.2** We request that the Committee note that the following submission is not intended to provide an exhaustive commentary on each component of the Terms of Reference. Rather, it is intended to provide a general examination of select areas of concern. As such, the absence of commentary on any particular aspect, component, or outcome of the Inquiry must not be read as or considered to be indicative of consent or acceptance.
- 1.3** Broadly, however, the submission holds the following to be true:

### BOX 1

- 1.3.a** that the activities of animal activists are primarily performed to provide both the relevant State or Territory authorities and potential consumers with evidence of systemic abuse or cultures of cruelty;
- 1.3.b** that this is done in order to provide the public with access to information otherwise unavailable;
- 1.3.c** that though the circulation of materials obtained by private animal cruelty investigators may impel additional activism events, such events are largely in response to underlying flaws, inconsistencies, and/or structural deficiencies in the animal welfare regulatory regime;
- 1.3.d** there currently exist significant and appropriate sanctions against, and penalties for, the carrying out of activities referred to (at both common law and under statute).

## BOX 3

**ABOUT US:**

**Animal Liberation** has worked to permanently improve the lives of all animals for over four (4) decades. We are proud to be Australia's first animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to animal welfare and 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.

## S2. KEY AREAS OF CONCERN

**2.1 Since at least the 1970s, the Australian animal protection movement has used various means and methods<sup>1</sup> to obtain materials, information, and evidence otherwise unavailable<sup>2</sup>. Such activities are not undertaken carelessly and are generally engaged in only when other traditional avenues have proven untenable or ineffectual<sup>3</sup>. All activities and interactions follow a strict policy of nonviolence<sup>4</sup>. That the ultimate aim of any such activity is to provide both the relevant authorities<sup>5</sup> and potential consumers with evidence of systemic abuse<sup>6</sup> stems from the present status agricultural operations largely enjoy as “socially invisible places”<sup>7</sup>. The dissemination of materials may then be considered to motivate additional activism<sup>8</sup>, though this is largely in response to institutional failures stemming from innate conflicts of interests<sup>9</sup> or refusals to initiate official investigations<sup>10</sup>. Perhaps most disheartening, these may also be considered reactions to the incompetence of existing law to meet heightened consumer standards or demands relating to animal welfare<sup>11</sup>.**

<sup>1</sup> Though trespass laws and penalties vary across Australian states and territories, unauthorised trespass is presently prohibited under Part 3, Section 50A of the relevant Victorian legislation (the *Summary Offences Act 1966*). This applies to trespass on land used for primary production (broadly defined as a “farming, agricultural, horticultural, viticultural, pastoral, or grazing operation”) and attracts a maximum penalty of 25 penalty units (\$4,130.50) or six months imprisonment. For comparison, the maximum penalty under Section 11 of the Queensland *Summary Offences Act 2005* is 20 penalty units (\$2,669) or 12 months imprisonment. Across all jurisdictions, the maximum imprisonment sentence is 12 months (Western Australia and Queensland) and the maximum financial penalty is 50 penalty units (\$5,500) in NSW.

<sup>2</sup> Agricultural and associated industries, as referenced in the Terms, have become adept at positively framing the issue of welfare as it applies to farmed animals. This is achieved discursively and visually. For example, the term “free-range” sanitises the liquefaction of day-old birds of no value to the hen-egg industry whilst creating a bucolic image consumers may be prepared to pay more for. For more on framing and animal welfare, see Vigors (2019) and Nijland et al. (2018).

<sup>3</sup> In giving evidence to the 2018 Legislative Council Select Committee on Landowner Protection from Unauthorised Filming or Surveillance, Animal Liberation held that undertaking such activities is not an activity taken lightly, nor one that is undertaken as a preference. Indeed, Animal Liberation has a current petition calling for the mandatory installation of CCTV devices in all Australian abattoirs. Such laws have been enacted elsewhere, with Scotland being the latest nation to mandate compulsory CCTV cameras in their abattoirs. A survey conducted by the Scottish Government revealed that over 95% of respondents were in favour of introducing compulsory CCTV recording devices in “all areas of approved slaughterhouses [...] where live animals are present”. Only 3.7% were against this. Similar laws have been enacted earlier in England. For more on the Scottish example, see Horne (2019). For more on the English example, see Smithers (2017).

<sup>4</sup> At no point in the history of the contemporary animal rights movement has any organisation or individual associated with an organisation engaged in acts of violence. As a whole, the movement strictly adheres to policies of non-violence. This position is taken in direct contradistinction to the contemporary zeitgeist which enables “violence towards animals [to be] configured as non violence”. For more on this, see Wadiwel (2015). For an Australian account, see Villanueva (2018). For a broader study on the non-violent ethos of the animal rights movement, see Nagtzaam (2017). For a broader analysis of non-violence and its association with pacifism within the animal rights movement, see Chapple (2018).

<sup>5</sup> Under Victorian legislation, the *Prevention of Cruelty to Animals Act 1986*, police officers, full- or part-time officers of the RSPCA, authorised officers under Section 72 of the *Domestic Animals Act 1994*, general inspectors (s18) and specialist inspectors (s18A) are empowered to conduct the enforcement provisions as set out in the relevant sections of the Act.

<sup>6</sup> Without evidence of ongoing (systemic) abuse or cultures of cruelty, it would be possible for those responsible to maintain that the egregious acts or abuses were committed by rogue operators and therefore do not represent the facility, or indeed the sector, as a whole. A key example of this is the live-baiting scandal that rocked the Australian greyhound racing industry in 2015. For further examples, see, for example, *Australian Competition and Consumer Commission v. C.I & Co. Pty. Ltd.* (2010). Many of these effectively led to institutional change because they revealed a *systemic culture of abuse*. Had an Ag-Gag clause requiring private animal cruelty investigators to divulge evidence of (ongoing) abuse been applicable, for example, these cases would not have the same strength, sense of urgency, or have led to the same outcomes. That is, had a requirement like “rapid-reporting” been codified in law, investigators could not have exposed the rampant abuse occurring. Such a system benefits the abuser over all others. For further information on the live-baiting scandal, see Meldrum-Hanna (2015).

<sup>7</sup> See McCausland et al. (2013), for example. Though modern slaughterhouses remain much the same as they were and have always been, in others they are dramatically different. The modern abattoir, for instance, has “become all but invisible, tending to be built far from human populations at sites that are both unseen and unknown”. For more on the “invisibilisation” of modern abattoirs, see Beirne (2014).

<sup>8</sup> Referred to as “incitement” in a recently proposed Bill making a series of sweeping amendments to the *Criminal Code Act (Cth)*.

<sup>9</sup> On a Commonwealth level, the roles and responsibilities of the Department of Agriculture *vis a vis* animal welfare, for example, are in absolute contradistinction to its concurrent role in promoting the very industries that exploit them. Such a conclusion, furthermore is not new. Similar allegations of conflict may be levelled against State and Territory bodies. Consider, for example, Meat and Livestock Australia’s vision: “a profitable and suitable meat and livestock industry that meets consumer and community expectations”. Now, consider Agriculture Victoria’s vision: “to grow Victorian agriculture and support the achievements of the government’s aspirations and programs for the food and fibre sector”. For more on conflicts of interest, see Parke (2012).

<sup>10</sup> For example, despite gross acts of abuse and clear violations of several industry Codes, Strath Meats in South Australia was excused of all cruelty allegations. See Zaczek (2018).

<sup>11</sup> It is rare for a prosecution to be made against breaches of Australian animal welfare legislation. When they are tabled, they regularly relate to non-farmed animals, such as companion cats or dogs. See, for example, Olle (2019).

A As such, private welfare investigations have often proven to be the only sources capable under the current regulatory regime to coherently provide consumers with a degree of otherwise unobtainable transparency<sup>12</sup>. Further, these refer to matters of significant public interest<sup>13</sup> to all Australians<sup>14</sup>. That is, for many average consumers, these materials represent the only reliable avenues via which they may gain access to information of this kind<sup>15</sup>. Whilst it is acknowledged that some of this material may initially be obtained illicitly<sup>16</sup>, it is held that this does not merit, invite, or justify measures (legislative or otherwise) devised against its collection or distribution<sup>17</sup> outside of those already in existence. Rather, the need for access to such information is actually *amplified* by the recognition that, within several short generations<sup>18</sup>, the agricultural industry as a whole and in general has become increasingly industrialised<sup>19</sup>. As a result, consumers have become “farther removed from the sources of their food”<sup>20</sup>. In toto, the increasing industrialisation of the food industry has led to a renewed

<sup>12</sup> “Coherent” insofar as they are not beholden to diametrically opposed responsibilities, such as those discussed above (see footnote #9).

<sup>13</sup> For example, Animal Liberation was involved in and gave evidence to a 2018 NSW Legislative Council Select Committee Inquiry into Landowner Protection from Unauthorised Filming or Surveillance when it sought commentary from the Australian public. Submissions made to this Inquiry included those of organisations and agencies such as the Australian Privacy Foundation (“APF”), the NSW Government, the Australian Veterinary Association (“AVA”), RSPCA Australia, NSW Farmers, the National Farmers’ Federation (“NFF”), and Egg Farmers of Australia. Of particular interest is a joint submission tabled by a coalition of media organisations. This group included AAP, SBS, Fairfax, NewsCorp, the ABC, and the Guardian. They held that existing legislation, the current offence regime, and associated penalties were adequate. Critically, the submission held that attempts to quell or quash information relating to industrial animal agriculture unjustifiably threatened public interest journalism. Similarly, RSPCA Australia’s submission to the same Inquiry maintained that “it is important that surveillance devices legislation [and, this submission would argue, by extension includes *all legislation*] strikes a balance between protecting the privacy of individuals while not unduly inhibiting the exposure of illegal and *unethical* conduct in the public interest” (emphasis added). The latter is particularly pertinent given its acknowledgement of both the need to expose *certain prohibited practices* in the public interest, and that such exposure may further seek to uncover not only *illegal*, but *unethical* conduct as well. For more information on the Inquiry, see the Committee website here <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=257#tab-resolution>. For the RSPCA’s submission to the Inquiry, see <https://www.parliament.nsw.gov.au/lddocs/submissions/60992/0011%20RSPCA%20Australia.pdf>. For more information on submissions made, including one tabled by Animal Liberation, to this Inquiry, see <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=257#tab-submissions>.

<sup>14</sup> Though funding for the Australian Animal Welfare Strategy was withdrawn in 2013, it held that “*all Australians*” value animal welfare. Yet, we continue to consume an inordinate amount of animal flesh per annum. On average, the standard Australian consumer will consume up to 40kg of chicken meat, 30kg of pig meat and 20kg of cow meat per year. This total consumption rate (approximately 90kg) is just over the weight of an average Australian adult (85.9kg). To say that the average Australian consumes their body weight in animalised protein is thus no exaggeration. That such consumption habits have been associated with increase risks of serious and non-communicable illness and disease further necessitates the unimpeded provision of information. This is amplified by the fact that scarce resources are squandered in the production of animal protein. Associated estimates consider up to 50% of all food produced is “lost before reaching a human stomach”. This, it must be noted, does not take into account important factors such as land use and degradation associated with the production of animal proteins. See ABARES (2019) and ABS (2012). For analysis of the wastage of resources, see, for example the Institution of Mechanical Engineers (2013). For information on land use, see Flachowsky et al. (2017).

<sup>15</sup> Industry attempts to appear transparent only further reveal the elements of their industry that are considered “off-limits” or potentially offensive to consumers. For example,

<sup>16</sup> Industry does not, for instance, routinely publish materials that may lead their consumers to reconsider the patronage of their product. For example, the hen-egg industry, “free-range” or not, does not disseminate information concerning the roughly 16 million newborn birds that are liquified alive in industrial blenders solely because they were born male (and, therefore, unable to lay eggs). Similarly, the Australian pig meat industry is not wont to provide accounts of what exactly “sow-stall free” means. Thus, whilst it is accepted that offences are enacted in obtaining such materials (via, primarily, trespass and the surreptitious installation of surveillance devices), it is held that such actions are undertaken not to derogate individual operators or industries, but to provide Australian consumer with access to information that they may then use in the formation of their opinion or decision.

<sup>17</sup> The breaking of the live-baiting scandal, for instance, did not attract calls for increased penalties for investigators of cruelty in the animal entertainment industry (at least, not in the same manner or with the same rigour applied when farmed animal cruelty cases are exposed). This reveals that it is not the suffering that is of primary concern. Rather, it is the type of animal that determines whether the suffering they experience is allowed to matter and force change.

<sup>18</sup> The drive for increased efficiency and cost-effectiveness also led to severe changes in the lives (and bodies) of the animals we eat most: chickens. According to recent studies, “human-directed changes” (selective breeding) have led the domestic (broiler) chicken to experience “at least a doubling in body size” compared to birds raised in the late medieval period. Even more stunning, since the mid-twentieth century domestic chickens have experienced “an up to fivefold increase in body mass”. For more, see Bennett et al. (2018).

<sup>19</sup> Characterised as an “unprecedented transformation,” the development of agriculture and its subsequent industrialisation dates back to the first combine harvesters of the 1830s. As technology developed, so too did the process by which it was used. As such, the industrialisation of agriculture also led to an increase in the corporatisation and mechanisation of the industry. For more on this, see Bruce and Faunce (2017). For more on the transformation industrialised agriculture wrought, see Harfeld, J. (2010). Husbandry to industry: animal agriculture, ethics, and public policy. *Between the Species*, 132-162

<sup>20</sup> This has also led to new food movements, such as “farm-to-fork” or “paddock-to-plate”. As these examples illustrate, many of these new movements are incumbent upon using alliteration to describe efforts to eat locally produced, largely organic, food.

fascination with or interest in the process<sup>21</sup>, perhaps borne of either a yearning for tradition or a broader sense of disconnection with the system itself<sup>22</sup>.

- B Instead of punishing whistleblowers or those who expose routine abuses, agricultural industries should be working “to make sure it has nothing to be ashamed of in how it treats its animals (or its workers)”. Industry must “provide the transparency” consumers are increasingly coming to expect from the companies manufacturing their food<sup>23</sup>. Recognising this, we are concerned that the present Inquiry, in spirit and in substance, unfairly errs on accepting the stifling of open public access to information<sup>24</sup> that operators of “agricultural and associated industries” may have an interest in protecting, or indeed, keeping secret<sup>25</sup>.

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<sup>21</sup> Indeed, without access to such information, awareness and the capacity to choose would be rendered largely impossible. This would ensure that Australian consumers are functionally prevented from making informed choices, and thereby, efforts to facilitate an obstruction to the exercising of such decision-making practices must be thoroughly considered. This is not a new principle. Over a decade ago, the Australian Government’s Productivity Commission published a review of Australia’s consumer policy framework. The Commission proposed that, in order to empower decision-making, consumers must be provided with accessible information. Further, the Commission’s final report explained that “consumers also have responsibilities to use their power in the market to drive out abuses, to encourage ethical practices, and to support sustainable consumption and production”. See the Productivity Commission (2008).

<sup>22</sup> Contained under a broad umbrella term by one prominent animal-eating author, Michael Pollan, as the “food movement,” this fascination may stem from a growing recognition that industrial food production is in desperate need of reform. Primarily, however, such reform refers to either improved health consequences for humans or less destructive impacts upon the environment. Pollan, for instance, is unapologetic about his consumption of animal products (he maintains that “eating meat [is] something I have always enjoyed doing,” even if it has become “problematic in recent years”). Despite this rather approving perspective, slaughterhouse operators were unwilling to let him witness what happens behind closed doors. This is particularly illuminating given the fact that Pollan is a journalist who bought a young black steer, paid the feedlot operators a daily stipend “for his room, board, and meds” in order “to sell him at a profit after he was fattened”. Ultimately, Pollan’s interest “was not strictly financial [...] or even gustatory” (even though he admittedly planned “to retrieve some steaks” from the slaughterhouse after the steer fulfilled his “appointment with the stunner”. Rather, Pollan’s interest was self-described as “educational”. Educational insofar as he “wanted to find out how a modern, industrial steak is produced [...] from insemination to slaughter”. This is an extract from an article published by the *New York Times Magazine* in early 2002: “A few hours after their arrival in the holding pens outside the factory, a plant worker will open a gate and herd No. 534 [the steer Pollan had purchased and followed to the slaughterhouse] and his pen mates into an alley that makes a couple of turns before narrowing down to a single-file chute. The chute becomes a ramp that leads the animals up to a second-story platform and then disappears through a blue door. That door is as close to the kill floor as the plant managers were prepared to let me go”. See Pollan (2002).

<sup>23</sup> See Ganzler (2019).

<sup>24</sup> See, for example, Weil (2017).

<sup>25</sup> Many of the most routine procedures inherent (or unavoidable) in the production of animal products may feasibly cause significant distress to unaware consumers as members of the public. Investigations routinely reveal improper stunning and protracted deaths, for example, or entirely sanctioned procedures such as the live liquefaction of day-old baby birds in the hen-egg and duck industries. Thus, Animal Liberation holds that simply refusing to label a procedure or practice “cruel” does not make it acceptable. This is shown by increasing popular concern for animal welfare issues. See, for example, Parker et al. (2018). Similarly disturbing yet approved practices, such as the on-site “euthanasia” of bobby calves in the dairy industry via blunt-force trauma to the head (i.e., a hammer to the skull), are otherwise hidden from the paying public. By criminalising the dissemination of materials depicting these practices, we risk condemning these animals to a hell kept legislatively out of sight and out of mind. For coverage of routine abuse, see Zaczek (2018). For information on the live liquefaction of newborn birds, see RSPCA Australia (2019). For an Australian-first account of the “euthanasia” of deformed ducklings, see Graham (2018). For general discussion on these matters, see Fiber-Ostrow & Lovell (2016).

**2.2 Developing public sentiment concerning the increasing importance consumers place on the welfare of the many millions of animals in the Australian agricultural supply chain can be considered and seen perhaps most immediately in the size and scope of public expressions of concern<sup>26</sup>.**

A The present submission therefore holds that the opinion of Kirby<sup>27</sup>, coupled with increasing popular/consumer interest in higher welfare standards<sup>28</sup>, indicates a changing political climate wherein transparency is not only institutionally required, it is increasingly *socially expected*<sup>29</sup>.

**2.3 The nature and spirit of currently operational legislation remains adequate for the purposes considered by the present Inquiry.**

A It is understood that the regulation and enactment of various pieces of State and Commonwealth legislation pertaining to animal welfare reside on “legally and politically sensitive ground”. That the overall framework is “riddled with inconsistencies, legal fictions, and creative exemptions” is emphasised<sup>30</sup>. Such deficiencies are particularly problematic and serious in the field of animal welfare as the sector under discussion involves the use of animals that are “sentient yet exploited for human ends”<sup>31</sup>.

B Thus, such protection is to be, if enacted, preferentially and differentially applied. It is therefore unacceptable, given that there is insufficient justification to impose additional penalties for offences that currently contain both substantial and appropriate sanctions (at common law and under statute). Further, these are currently operational in such a way as to ensure that private whistleblowers may not necessarily fear undue or excessive retribution. This renders the exemptions provided within the Bill<sup>32</sup> unnecessary, as they already exist.

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<sup>26</sup> Following calls for public submissions on the draft Australian Animal Welfare and Guidelines for Poultry, Animal Health Australia (AHA) announced that it had received the largest response to a public consultation they had ever managed. For further information, see AHA. (2018, February 26). Record response to poultry welfare standards during public consultation.

<sup>27</sup> See Kirby, in Goodfellow and Radan (2015).

<sup>28</sup> Parker, C., Scrinis, G., Carey, R. & Boehm, L. (2018). A public appetite for poultry welfare regulation reform: why higher welfare labelling is not enough. *Alternative Law Journal*, 43(4), 238-243.

<sup>29</sup> For example, a recent review published by Australian Eggs Limited acknowledged that “the community has become more vocal and influential concerning animal welfare” and that there is a “growing acceptance in public policy and community views that *animals are sentient*” (emphasis added). Therefore, the review maintains that any contemporary welfare guidelines should “attempt to reflect current practice and community expectations”. As a general rule, the industry considers the existence of an ethical “minimum community standard” and maintains that legislation [...] often (and necessarily) falls short of meeting collective community [...] expectations”. Again, without access to all relevant information the community will be *a priori* unable to share or register such expectations. This, in turn, ensures that community expectations about animal welfare standards do not result in either reform or outlawing. See Millar, (2018).

<sup>30</sup> Walker-Munro, B. (2015). *Cattle v the Crown*: is there a place for the commonwealth as animal welfare guardian? *University of Queensland Law Journal*, 34(2), 363-391.

<sup>31</sup> This occurs within a wider paradigm wherein other animals are the property or people. As such, they are powerless to assert their own interests and therefore, it may be argued, are reliant on the efforts of people the present Bill seeks to gag. See Ellis, E. J. (2010). Making sausages and law: the failure of animal welfare laws to protect both animals and fundamental tenets of Australia’s legal system. *Australian Animal Protection Law Journal*, 4, 6-26.

<sup>32</sup> Sections 474.46(2), 474.46(3), 474.47(2), 474.47(3) and 474.48 refer either to exemptions made for journalists, public interest, or an implied freedom of political communication.

**2.4 It is held that the present Inquiry is a response to and a promised punitive crack-down<sup>33</sup> on increasingly popular levels of animal advocacy<sup>34</sup>.**

A Rapidly rising levels of involvement in and awareness of the animal advocacy space, the corresponding increase in levels of consumer activity in the promotion of welfare improvements<sup>35</sup>, the development and marketing of plant-based, cruelty-free, and vegan alternatives<sup>36</sup> to animal-based products<sup>37</sup> and the associated engagement of retail sectors<sup>38</sup> or stock markets<sup>39</sup>, and an increasing concern regarding the reliance on overburdened regulatory institutions welfare agencies, and/or charities<sup>40</sup> to ensure compliance are all important factors to consider<sup>41</sup>. That these components were not included in the Terms ensures that the scope and spirit of the Inquiry narrowly and preferentially considers additional protection of some over others.

B Thus, though it is understood that there is occasionally a need to minimise or correct certain inconsistencies within existing law, this submission holds that good and practical laws are crafted to guide and govern acceptable behaviour<sup>42</sup>. That previous laws currently contain the offences alluded to in the Terms under illustrate the merit and ongoing relevancy of pre-existing penalty provisions.

<sup>33</sup> It was in mid-June 2019 that Prime Minister Scott Morrison “first spruiked the laws that could see activists imprisoned for up to 12 months” following a series of “nonviolent actions”. Other, later, accounts rhetorically associated animal activism with “domestic terrorism,” despite the fact that as a whole the movement is devoted to nonviolence. For more on the configuration of nonviolence, see Wadiwel, D. (2015). *The War Against Animals*, Brill, Boston. For more on the rhetoric of “domestic terrorism” see Potter, W. (2011). *Green Is the New Red: An Insider’s Account of a Social Movement Under Siege*, San Francisco, City Lights Books. For more on the promised punitive “crackdown”, see Gregoire, P. (2019, June 19). Morrison’s animal activist crackdown promises 12 months jail for protestors. *The Big Smoke*. Available via <https://www.thebigsmoke.com.au/2019/06/19/morrison-s-animal-activist-crackdown-promises-12-months-jail-for-protestors/> and Maloney, M. (2019, July 16). Australian Government introduces laws to crack down on animal rights protestors. *The Advocate*. Available via <https://www.theadvocate.com.au/story/6276703/crackdown-on-animal-rights-protestors/>.

<sup>34</sup> Often associated with veganism, the Australian animal rights movement is “rising” to an unprecedented level at which it threatens losses in the billions for animal agribusiness sector. See Smith, S. & Bernasconi, A. (2019, May 29). Animal welfare concerns predicated to have \$3.2b impact on livestock sector says meat industry expert. *ABC News Online*. Available via <https://www.abc.net.au/news/rural/2019-05-29/vegan-movement-challenges-for-red-meat-industry/11154724>.

<sup>35</sup> Animal Health Australia (AHA). (2018, February 26). Record response to poultry welfare standards during public consultation. Available via: <https://bit.ly/2XUQ07E>.

<sup>36</sup> Animal Liberation is a strictly abolitionist organisation. Therefore, we do not accept or condone any harmful or unnecessary use of animals. Indeed, we believe that any such use is abuse, especially given the wholly unnecessary nature of many of these (ab)-uses. It is noted that the functional root of this system is the property status given to other-than-human animals. For further information on abolitionism as it applies to animal rights activism and veganism, see G. L. Francione’s *Animals As Persons: Essays on the Abolition of Animal Exploitation* (2008).

<sup>37</sup> Recent media articles have claimed that the majority of products produced for human consumption by 2040 will be plant-based. See Carrington, D. (2019, June 13). Most ‘meat’ in 2040 will not come from dead animals, says report. *The Guardian*. Available via <https://www.theguardian.com/environment/2019/jun/12/most-meat-in-2040-will-not-come-from-slaughtered-animals-report>.

<sup>38</sup> See, for example, Condon, J. (2018, 19 June), Woolies [Woolworths Australia] vegetarian ‘mince’ sells out within days of launch. *Beef Central*, 19 June. Available via: <https://bit.ly/2ZBBb0F>.

<sup>39</sup> See, for example, Garcia, T. (2019, 13 June). Beyond Meat at risk as competitors like Impossible Burger take root. *MarketWatch*. Available via <https://on.mktw.net/2x2koaS>.

<sup>40</sup> The RSPCA, for instance, is a registered charity and is expected to regulate animal protection laws. The Victorian *Prevention of Cruelty to Animals Act 1986* cites the RSPCA as one of four bodies tasked with investigating violations of the Act (the others are the Victorian Police, department officers authorised by the Minister for Agriculture who are also inspectors under the *Livestock Disease Control Act*, and Authorised Council Officers). For further discussion on the conflicts of interest inherent in the present system, see footnote #109 below.

<sup>41</sup> The latter, in particular, is a matter that warrants more consideration and attention than it has received to date. As an example of regulatory capture, the role of the RSPCA as the primary enforcement agency of several States anti-cruelty laws refers to the inadequate resources at its disposal. Meanwhile, government bodies such as Departments of Primary Industry (“DPIs”), and indeed the Commonwealth Department of Agriculture, “advocate for the industry they are meant to be regulating”, thereby “causing the public interest purpose of the regulation to become subordinated”. This creates the public interest roles of private animal cruelty investigators increasingly vital in a climate of poor animal welfare regulations and frameworks. See Mundt, A. (2015). Australia’s need for an Independent Office of Animal Welfare. *Global Journal of Animal Law*, 1-26.

<sup>42</sup> Arbon, S. & Duncafe, Z. (2014). Food, animals, and the law: do we have a moral obligation to protect them from the suffering that the law does not? *Griffith Journal of Law and Human Dignity*, 2(1), 199-221.

**2.5 Given the above, there are a range of key areas of concern regarding landowner protection. Chief amongst these concern differential protection and a dismantling of key public interest .**

Specifically, an increasing awareness concerning the significant practical shortcomings of authorities currently tasked with governing animal welfare policy and its enforcement as stemming from:

- (i) an inherent clash of interests<sup>43</sup> and;
- (ii) an institutional reluctance to provide the requisite resources required to appropriately prosecute, or otherwise police, cases of animal cruelty,

suggests the need for urgent structural changes in this arena.

**2.6 As it applies to the animals themselves, the practice of their intensive “warehousing”<sup>44</sup> and breeding for human consumption (or use otherwise) has been critiqued as “perhaps the worst crime in history”<sup>45</sup>.**

A Though the morality of the underlying issue is of no concern to the Inquiry at hand, the growing public concern for animal welfare issues such as those the present proposal will envelope in legislated secrecy can be seen by the record-breaking number of submissions provided to Animal Health Australia (AHA)<sup>46</sup>. That such a response was received indicates the changing political climate surrounding animal ethics and welfare as it was the first review of its kind in over a decade<sup>47</sup> <sup>48</sup>.

<sup>43</sup> For example, the NSW Minister for Primary Industries is simultaneously tasked with the promotion of primary industries (including animal enterprises) and the protection of animals exploited by them. This structural conflict of interest is unacceptable, and reveals the gross inadequacies present in current Australian animal welfare law.

<sup>44</sup> Cassuto, D. N. (2007). Bred meat: the cultural foundation of the factory farm. *Law and Contemporary Problems*, 70(1), 59-87.

<sup>45</sup> Harari, Y. N. (2015, September 25). Industrial farming is one of the worst crimes in history. *The Guardian*. Available via <https://www.theguardian.com/books/2015/sep/25/industrial-farming-one-worst-crimes-history-ethical-question>. Also see Harari, Y. N. (2015). *Sapiens: A Brief History of Humankind*. New York, Harper Collins.

<sup>46</sup> Over 165,000 submissions were made to AHA, making it “the largest response to a public consultation”. See the AHAs media release, Record response to poultry welfare standards during public consultation, here <https://animalhealthaustralia.com.au/wp-content/uploads/Record-response-to-poultry-welfare-standards-during-public-consultation.pdf>.

<sup>47</sup> RSPCA Australia notes that “these standards will govern the way all poultry species in Australia are treated - that’s over 700 million birds every year, for at least the next decade or more”. See Hartcher, K. & Goodfellow, J. (2017, February 27). Why we’re worried about Australia’s flawed poultry welfare standards. Available via <https://www.rspca.org.au/blog/2017/why-we%E2%80%99re-worried-about-australia%E2%80%99s-dangerously-flawed-poultry-welfare-standards>. World Animal Protection Australia (WAPA), meanwhile, characterised the reconsideration as “a once-in-a-decade review” (available via <https://www.worldanimalprotection.org.au/keep-pressure-australian-chickens>).

<sup>48</sup> Subsequent studies have argued that “this level of public interest is hardly surprising given the large number of Australians who regularly buy free-range eggs” and go on to cite “the high level of public discussion about welfare standards” for chickens as factors influencing this staggering figure. Though retail turnover of “free-range” eggs has surpassed that of cage, barn, and organic eggs since 2012, cage eggs still outcompete free range eggs in absolute volume of eggs produced (estimates are between 52% and 39%, respectively). See Scott, A. B., Singh, M., Toribio, J., Hernandez-Jover, M., Barnes, B., Glass, K., Moloney, B., Lee, A. & Groves, P. (2017). Comparisons of management practices and farm design on Australian commercial layer and meat chicken farms: cage, barn and free range. *PLoS One*, 12(11). For further information on the standards see Parker, C., Scrinis, G., Carey, R. & Boehm, L. (2018). A public appetite for poultry welfare regulation reform: why higher welfare labelling is not enough. *Alternative Law Journal*, 43(4), 238-243.

## S3. RECOMMENDATIONS

### 3.1 **Given the overwhelming and significant inconsistencies and shortcomings hampering the present animal welfare regulatory framework, coupled with the potential conflicts of interest this involves, it is increasingly pressing for the creation of an Independent Office of Animal Welfare (“IOAW”) to be established.**

- A Every year, Australia breeds and slaughters over half a billion farmed animals<sup>49</sup>. At any moment, up to 76 million sheep, 29 million cattle and 99 million chickens are under the dominion of Australians<sup>50</sup>. Many of these are held by industries that are governed by Model Codes of Practice (“MCOPs”) and/or Standard Operating Procedures (“SOPs”). Work is currently underway to update the MCOPs to establish an Australian Animal Welfare Standards and Guidelines (“S&Gs”).
- B As a nation, Australians claim to support “the adoption of high standards of animal welfare”<sup>51</sup>. According to the Australian Government, “all Australians value animals and are committed to improving their welfare”<sup>52</sup>. Currently, animal welfare is governed by State and Territory legislation<sup>53</sup> - there are no national laws applicable to animal welfare<sup>54</sup>. Given the inconsistencies and problems inherent in such a system, the establishment of a federal Independent Office of Animal Welfare (“IOAW”) is recommended for urgent consideration<sup>55</sup> and is supported by various Parties<sup>56</sup> and agencies<sup>57</sup>.

<sup>49</sup> See the Australian Bureau of Statistics (ABS). (2019). Trends in livestock slaughtered and meat produced. Available via <https://www.abs.gov.au/ausstats/abs@.nsf/mf/7218.0.55.001>.

<sup>50</sup> See World Animal Protection (WAP). (2017, May 17). It's time for a national approach to animal welfare. Available via <https://www.worldanimalprotection.org.au/news/its-time-national-approach-animal-welfare>.

<sup>51</sup> Australian Government, Department of Agriculture. (2017). Animal welfare issues. Available via <http://www.agriculture.gov.au/animal/welfare/animal-welfare-issues#poultry>.

<sup>52</sup> Though funding for the Australian Animal Welfare Strategy was withdrawn in 2013, it held that “all Australians” value animal welfare. For further information on the now-defunct Strategy, see the Australian Government, Department of Agriculture. (2016). Australian Animal Welfare Strategy (AAWS) and National Implementation Plan 2010-14. Available via <http://www.agriculture.gov.au/animal/welfare/aaws/australian-animal-welfare-strategy-aaws-and-national-implementation-plan-2010-14#australian-animal-welfare-strategy>.

<sup>53</sup> Often, enforcement of such legislation is the responsibility of various State RSPCAs.

<sup>54</sup> At present, the Commonwealth is responsible for the trade and international agreements made relating to live export and export abattoirs. For more information about the legislation, and the roles and responsibilities of State and Territory animal welfare laws, see RSPCA Australia. (2019). What is the Australian legislation governing animal welfare? Available via <https://kb.rspca.org.au/knowledge-base/what-is-the-australian-legislation-governing-animal-welfare/>. For more information about the Commonwealth's roles and responsibilities, see AHA. (2019). Animal welfare legislation. Available via <https://www.animalhealthaustralia.com.au/what-we-do/livestock-welfare/animal-welfare-legislation/>.

<sup>55</sup> Labor, for instance, have promised to provide \$1 million a year to establish an Inspector-General of Animal Welfare. This would be a statutory position responsible for advising on the protection of animals on a national level. Given the exposure, made possible by private animal cruelty investigators and whistleblowers, of shocking suffering associated with the live-export industry, the inclusion of animal welfare within the portfolio of the Minister for Agriculture is held by many to be unacceptable. Claims that the whistleblower was paid or fabricated evidence of cruelty were proven false. For further information on the live-export exposé, see Daly, J. (2019, July 8). Investigation finds no evidence of illegal whistleblower payment or fabricated cruelty on live export ship. *ABC News Online*. Available via <https://www.abc.net.au/news/rural/2019-07-29/investigation-finds-no-illegal-whistleblower-cruelty-live-export/11354518>. For further information on Labor's six-point animal welfare plan, see McGreevy, P. & Phillips, C. (2019, May 2). Can Labor's animal welfare plan improve Australia's lacklustre record? *The Conversation*. Available via <https://theconversation.com/can-labors-animal-welfare-plan-improve-australias-lacklustre-record-116261>.

<sup>56</sup> The Australian Greens, for example, have previously introduced Bills to establish an IOAW. See the *Voice for Animals (Independent Office of Animal Welfare)* private members bill here [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s1006](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1006).

<sup>57</sup> A 2016 submission by RSPCA Australia to the Productivity Commission stated that the Society “fully supports the recommendation to establish an independent body tasked with developing national standards and guidelines for farm animal welfare”. See the RSPCA Australia submission here [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0005/207185/subdr223-agriculture.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0005/207185/subdr223-agriculture.pdf).

- C In order for animals to be adequately protected, national leadership is necessary<sup>58</sup> and must be made a priority for upcoming Governments<sup>59</sup>. An IOAW provides “an effective way to improve farm animal welfare”<sup>60</sup>. It would also quell concerns about the role of the RSPCA<sup>61</sup>, State Police, and Departments<sup>62</sup> charged with sharing the responsibility for animal welfare<sup>63</sup>.
- D In 2016, a Productivity Commission report<sup>64</sup> recommended the establishment of a national independent animal welfare commission tasked with co-ordinating the development and implementation of national standards.
- E A 2018 review (the Moss Review<sup>65</sup>) found that the Department of Agriculture struggled to “balance its competing roles of promoting the live export trade and protecting animal welfare”. It also found that “cuts made to animal welfare services in 2013 contributed to a culture that neglected animal welfare responsibilities”<sup>66</sup>. 5.3 The present system of penalties for already existing offences is maintained as appropriate, and therefore, not in need of amplification. Rather, the animal welfare regulatory framework as a whole requires thorough reconsideration.
- F We are encouraged by the preliminary moves made by the Opposition in reestablishing public discourse on the issue of national animal welfare regulation.

***Proactive policy, rather than reactive legislation, is urgently required.***

<sup>58</sup> RSPCA Australia. (2019, March 12). Why national leadership on animal welfare should be a priority for the next Australian Government. Available via <https://www.rspca.org.au/blog/2019/why-national-leadership-animal-welfare-should-be-priority-next-australian-government>.

<sup>59</sup> For example, the Hon. Member for Hunter and Shadow Minister for Agriculture and Resources, Joel Fitzgibbon, has committed to reinstating national leadership in animal welfare matters via a six-point animal welfare plan. See the April 2019 Media Release here [http://www.joelfitzgibbon.com/labor\\_will\\_reinstate\\_national\\_leadership\\_on\\_animal\\_welfare](http://www.joelfitzgibbon.com/labor_will_reinstate_national_leadership_on_animal_welfare).

<sup>60</sup> Mundt, A. (2015). Australia’s need for an Independent Office of Animal Welfare. *Global Journal of Animal Law*, 1-26.

<sup>61</sup> A 2016 report on an independent review of the RSPCA Victoria inspectorate (“the Comrie Report”) maintained that, as “a non-government, community-based charity,” the RSPCA is in a “privileged” position as authorised to enforce the *Prevention of Cruelty to Animals Act* as “no other charity [...] has similar law enforcement powers”. Such powers, however, have come with crippling responsibility. As previously discussed, the Comrie Report found that there were concerns regarding a “perceived conflict of interest”. The Report maintained that this perception has caused significant “reputational [sic] damage” to the RSPCA, with a growing cohort of the public challenging its “capacity to operate as an independent body” responsible for enforcing State animal cruelty legislation. Tellingly, the Report issued a recommendation (#21, p. 60) encouraging the RSPCA to “disengage from public activism against the laws of the State”. For further information, see the Final Report here [https://www.parliament.vic.gov.au/file\\_uploads/EIC\\_Inquiry\\_into\\_the\\_RSPCA\\_jk5k41vH.PDF](https://www.parliament.vic.gov.au/file_uploads/EIC_Inquiry_into_the_RSPCA_jk5k41vH.PDF).

<sup>62</sup> That is, “the Agriculture Department’s priority is to promote the interests of primary industry”. This “conflicts irreconcilably with the responsibility to protect the welfare of animals” and “puts the minister [of Agriculture] in an invidious position”. See Parke, M. (2012, February 16). Animal welfare cruelled by conflict of interest. *The Sydney Morning Herald*. Available via <https://www.smh.com.au/politics/federal/animal-welfare-cruelled-by-conflict-of-interest-20120215-1t5l2.html>.

<sup>63</sup> Indeed, the regulatory system as a whole has been described as “characterised by conflicts of interest”. Damningly, it can reasonably be argued that “it is not simply that animal welfare is peripheral to the main function of these agencies, but that their core responsibilities and requirements of animal welfare often conflict”. That is, “their core responsibilities” of promoting and protecting primary industry and regulating animal welfare legislation are irreconcilable. See Ellis, E. (2013). Bearing the burden: shifting responsibility for the welfare of the beast. *Macquarie Law Journal*, 11(4), 39-49.

<sup>64</sup> See the Commission’s information page here <https://www.pc.gov.au/inquiries/completed/agriculture/report>. See an Overview of the Final Report here <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture-overview.pdf>.

<sup>65</sup> See the Review into Regulatory Capability and Culture (the Moss Review) here <http://www.agriculture.gov.au/animal/welfare/export-trade/independent-review-of-regulation>.

<sup>66</sup> For more information on the Moss Review, see RSPCA Australia. (2019, March 12). Why national leadership on animal welfare should be a priority for the next Australian Government. Available via <https://www.rspca.org.au/blog/2019/why-national-leadership-animal-welfare-should-be-priority-next-australian-government>.

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