

Consultation on NSW Animal Welfare Reform - Issues Paper

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The NSW Young Lawyers Animal Law Committee **(Committee)** makes the following submission in response to the NSW Animal Welfare Reform - Issues Paper **(Issues Paper)**.

NSW Young Lawyers

NSW Young Lawyers is a division of the Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

The Committee comprises a group of over 400 members interested in animal protection and laws regulating the treatment of animals. The Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst Committee members is a passion and desire to use their legal skills and the law to improve the protection of animals.

Structure of submission & Summary of Recommendations

The Committee's submission will address the following questions from the Issues Paper. We also include in the below table, a summary of the recommendation for each question addressed by the Committee.

		Summary of recommendation
Question 1	Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?	Recognition of animal sentience ought to be included as an object of all animal welfare laws, as has been inserted in the main objects of the <i>Animal Welfare Act 1992</i> (ACT).
Question 2	Do you have any comments on the interactions between the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW), <i>Animal Research Act 1985</i> (NSW), and <i>Exhibited Animals Protection Act 1986</i> (NSW)?	Cruel activities prohibited under the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW) should not be considered a justifiable defence simply by virtue of their compliance with the <i>Animals Research Act 1985</i> (NSW).
Question 3	Should additional species be included in the definition of 'animal' and therefore covered by animal welfare provisions (for example, cephalopods, crustaceans in all situations, other species)? Why?	The definition of 'animal' is unnecessarily narrow as it makes arbitrary distinctions that fail to reflect the sentience of animals. All sentient species should be included in the definition of 'animal.'
Question 4	Should a consistent definition of 'animal' be used across the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW), <i>Animal Research Act 1985</i> (NSW), and <i>Exhibited Animals Protection Act 1986</i> (NSW)? Why?	Sentience should be used as the uniform criteria by which 'animal' is defined as it will aim to ensure that all beings that are capable of suffering are protected from cruelty.
Question 5	Do you have any comments on how 'cruelty' is currently defined within the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW)?	The definition of cruelty should incorporate a reference to sentience, as it would provide a strong basis for effective welfare laws by indicating a reason for the legal protection of animals.
Question 6	Would you support introducing a minimum standard of care into the new animal welfare laws?	The Committee supports introducing a minimum standard of care into the new laws. Introducing a duty of care is proactive and is a directive which protects animal welfare, rather than punishing cruel behaviour.
Question 7	Do you have any comments on using existing 'fail to provide' provisions under the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW) as a basis for a minimum standard of care?	The current 'fail to provide' provisions can form a basis of a minimum standard; however, the Committee recommends a number of provisions that ought to be added to the current provisions, to create one duty of care.
Question 8	Do you have any suggestions about how the definition of pain could be updated?	The definition of pain should be made clearer to contemplate both the physical and mental aspects of pain.

Question 10	Are there any activities currently considered as research or teaching activities under the <i>Animal Research Act 1985</i> (NSW) that should be excluded? If so, why?	Ideally, all of the activities should be phased out, as there is strong evidence to suggest that animals and humans react differently to the same drugs and stimuli. However, until such time, the research activities and teaching activities should remain in the <i>Animal Research Act 1985</i> (NSW) to ensure they are properly regulated.
Question 11	Are there any additional activities that should be considered as research or teaching activities under the <i>Animal Research Act 1985</i> (NSW)? If so, why?	The focus should not be on adding further fields of research to the <i>Animal Research Act 1985</i> (NSW), but rather, on reducing the amount of research being conducted on animals.
Question 12	Are there any activities currently included in the definition of 'exhibit' in the <i>Exhibited Animals Protection Act 1986</i> (NSW) that should be excluded? If so, why?	No activities currently included in the definition of 'exhibit' should be excluded.
Question 13	Are there any additional activities that should be included in the definition of 'exhibit' under the <i>Exhibited Animals Protection Act 1986</i> (NSW)? If so, why?	The following should be an included activity in the definition of 'exhibit': <ol style="list-style-type: none"> 1. Animals exhibited in connection with the sale or intended sale of an animal; and 2. Establishments which exhibit animals in connection to their business, such as on commercial premises which house aquariums, aviaries or animal pens.
Question 17	Do you have any comments on providing authorised inspectors with powers and tools (for example, being able to check compliance with an existing direction) to provide proactive support to help prevent adverse animal welfare outcomes?	Inspectors ought to have a more proactive role, by way of: <ol style="list-style-type: none"> 1. Making greater use of the non-governmental charitable organisations to contribute to animal welfare monitoring and enforcement. 2. Employing proactive mechanisms such as ongoing monitoring, mandatory educational programs for offenders, and compliance support.
Question 18	Should the current provisions that require inspectors under the <i>Animal Research Act 1985</i> (NSW) to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach? Please explain your answer.	A move towards a risk-based approach to inspector qualifications and powers would enable inspectors to be better equipped to discharge their duties under the <i>Animal Research Act 1985</i> (NSW).
Question 19	Noting the educational focus of Stock Welfare Panels, would you support further consideration of how the Stock Welfare Panel process could be applied to support better animal welfare outcomes in non-agricultural cases?	The Committee is supportive of extending the use and remit of Stock Welfare Panels in certain circumstances. However, this is subject to consideration of the suitability of that mechanism to certain animal welfare scenarios and a revision of the

		provisions governing the constitution of Stock Welfare Panels.
Question 20	Are there any specific issues you would like to raise as we review the penalties for all offences under the <i>Prevention of Cruelty to Animals Act 1979</i> (NSW), <i>Animal Research Act 1985</i> (NSW), and <i>Exhibited Animals Protection Act 1986</i> (NSW)?	A wide range of amendments is required in order to appropriately remedy the number of inadequacies in the penalties under the NSW animal welfare regime. The Committee makes some specific recommendations.
Question 21	Would you support consideration of a risk-based approach to licensing under the <i>Animal Research Act 1985</i> (NSW) and/or <i>Exhibited Animals Protection Act 1986</i> (NSW), where it would not result in weakened protections for animals? Why?	The Committee supports a risk-based approach to licensing under both the <i>Animal Research Act 1985</i> (NSW) and/or <i>Exhibited Animals Protection Act 1986</i> (NSW), provided this is only the case where protections for animals are not weakened and resources are allocated to ensure high-risk business are properly accredited and scrutinised.
Question 22	Which areas within the animal welfare legislative framework could be improved to reduce unnecessary red tape or make requirements clearer?	The framework of the <i>Animal Research Act 1985</i> (NSW) should be improved by way of clearer requirements regarding: <ol style="list-style-type: none"> 1. Reporting requirements and transparency; and 2. Prioritisation of release, rehabilitation and rehoming of research animals. <p>The <i>Exhibited Animals Protection Act 1986</i> (NSW) could be improved through banning the use of exotic animals in entertainment.</p>
Question 23	Do you have any comments on what the role of panels and committees should be in supporting the new animal welfare legislative framework?	The Animal Ethics Committee, Animal Research Review Panel and the Exhibited Animals Advisory Committee should increase the representation of persons with a background in animal welfare.

Discussion

The Committee comments on the Questions contained in the Issues Paper as follows:

1. Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?

The Committee submits that recognition of animal sentience ought to be included as an object of all animal welfare laws. The Committee recognises that non-human animals (**animals**) are sentient beings by virtue of their ability to subjectively feel and perceive the world around them. Sentience thus indicates the weight to be given to their welfare and it is central to understanding how we should treat them.¹ The Australian Animal Welfare Strategy confirms in its National Implementation Plan that ‘sentience is the reason that welfare matters.’

On 26 September 2019, animal sentience was expressly recognised in the Australian Capital Territory (**ACT**) by legislative amendment to the *Animal Welfare Act 1992* (ACT). The main objects of that Act now require recognition of the following:

1. animals are sentient beings that are able to subjectively feel and perceive the world around them; and
2. animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value; and
3. people have a duty to care for the physical and mental welfare of animals.²

The Committee submits that a similar section on animal sentience be inserted into all the main objectives of NSW animal law legislation.

The recognition of animal sentience has been shown to play an important role in informing legislative interpretation.³ This is evident in the case in the European Union, which recognised animal sentience in 1977, and in doing so created an obligation to afford full regard to the welfare requirements of animals.⁴

¹ National Animal Welfare Advisory Committee “Submission to the Primary Production Committee on the Animal Welfare Amendment Bill 2013” at [5].

² *Animal Welfare Act 1992* (ACT), s 4A(1).

³ “ACT’s new animal sentience law recognizes an animal’s psychological pain and pleasure, and may lead to better protections: 3 October 2019, The Conversation <https://theconversation.com/acts-new-animal-sentience-law-recognises-an-animals-psychological-pain-and-pleasure-and-may-lead-to-better-protections-124577>

⁴ Brexit, Article 13, and the debate on recognizing animal sentience: in law, 28 November 2017 <https://www.alaw.org.uk/wp-content/uploads/Article-13-Legal-Briefing-Note.pdf>

The Committee submits that recognition of animal sentience in animal welfare laws will bring the legislation into alignment with community values. As early as 2009, Peter Sankoff, an animal protection scholar, 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.'⁵

The recognition of animal sentience in the objects of NSW animal welfare legislation also reflects global best practice. Animal sentience was expressly recognised by legislation passed by the French National Assembly in 2014,⁶ the New Zealand Parliament in 2015,⁷ the parliament of the province of Quebec in 2015,⁸ Colombia in 2016,⁹ and Brussels and Slovakia in 2018.¹⁰

The Committee submits that the recognition of animals as sentient beings would pave way for more quality animal welfare by 'promoting and protecting the welfare of animals, providing for the proper and humane care, management and treatment of animals, deterring and preventing animal cruelty and the abuse and neglect of animals',¹¹ coupled with enacting specific laws that centre around the sentient status of animals, the intrinsic value of animals, and the duty of care people have for the welfare of animals.

2. Do you have any comments on the interactions between the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?

The Committee submits that cruel activities otherwise prohibited under the *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTA**), should not be considered permissible¹² simply by virtue of their compliance with the *Animals Research Act 1985* (NSW) (**ARA**). In particular, the Committee further submits that the benefit derived from animal research does not justify the suffering caused to animals because animals are sentient beings that are able to subjectively feel and perceive, inter alia, pain and suffering.

The utility and ethics of animal research has long been debated by the scientific community. In 1991, former animal researcher, John P. Gluck opined, 'the use of animals in research should evolve out of a strong sense

⁵ Peter Sankoff, 'The Welfare Paradigm: Making the World a Better Place for Animals?' in Peter Sankoff and Steven White (eds), *Animals Law in Australasia: A New Dialogue* (The Federation Press, 2009) 7, 9.

⁶ French Civil Code, Art. 515-14: "Animals are living beings gifted with sentience. Subject to the laws that protect the animals, they are subjected to the regime of goods."

⁷ *Animal Welfare Amendment Act (No 2) 2015* (NSW), s 4.

⁸ Quebec Civil Code, Art. 898.1: "Animals are not things. They are sentient beings and have biological needs. In addition to the provisions of special Acts which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals."

⁹ Colombia Civil code, Art. 655: "Recognizing the quality of sentient beings to animals".

¹⁰ Nicole Pallotta, 'Brussels Recognizes Animals as Sentient Beings Distinct from Objects', *Animal Legal Defense Fund* (9 December 2018) < <https://aldf.org/article/brussels-recognizes-animals-as-sentient-beings-distinct-from-objects/>>.

¹¹ *Animal Welfare Act 1992* (ACT), s 4A.

¹² *Prevention of Cruelty to Animals Act 1979* (NSW), s 24(1)(e).

of ethical self-examination. Ethical self-examination involves careful analysis of one's own personal and scientific motives. Moreover, it requires a recognition of animal suffering and a satisfactory working through of that suffering in terms of one's ethical values'.¹³

In order to discuss the ethics and utility of animal research, discussion needs to be turned to the arguable legitimacy of the practice with reference to the intended purpose and the means of animal research. The intended primary purpose of animal research is directed at and intended to yield benefits for humankind, specifically for scientific and medical research that leads to medical progress and therefore advantages human health.¹⁴ The particular aim is for animal research to find treatments and cures for human diseases, illness and conditions, or decrease the suffering of human patients, and consequently, benefit mankind.¹⁵ With respect to the means, the pain and suffering caused to animals is deemed to be legitimate if it is 'necessary'¹⁶ and proportionate to the end (that is, the purpose) sought to be achieved. Substantial suffering may be inflicted if there is a 'necessity for its infliction'¹⁷ that 'can reasonably be said to exist.'¹⁸ There is, therefore, an implication manifested that the greater the legitimacy of the purposes or objects of animal research, then the greater the scope for the infliction of pain and suffering upon the animal in the means.

With respect to the utility of animal research, there is a general assumption in biomedical research that the use of animal models can be relied on as predictive of positive health outcomes for humans. However, this assumption is flawed, as the reality is that there are key physical and biological differences between humans and animals that impact the reliability of animal models.¹⁹ By way of example:

1. An animal used for the purposes of medical research for the cure for cancer would be high on the scale of legitimacy, and so the degree of pain and suffering that can be caused to an animal for that purpose can be fairly unlimited if there is a strong causal connection and necessity for that pain to produce that end. However, mouse models used in animal research testing carcinogenicity were orally given (or injected) with

¹³ John P. Gluck, 'Animal experiments and animal rights' (1991) *Ethics and Behavior* 1.

¹⁴ David DeGrazia, 'The Ethics of Animal Research: What are the Prospects for Agreement?' (1999) 8(1) *Cambridge Quarterly of Healthcare Ethics*, 23-24.

¹⁵ Jean Greek and Ray Greek, 'Is The Use Of Sentient Animals In Basic Research Justifiable?' (2010) 5(14) *Philosophy, Ethics, and Humanities in Medicine*.

¹⁶ *Ford v Wiley* (1889) 23 QBD 203, 219-220 (Hawkins J).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Peter Radan, 'Antivivisection and Charity' (2013) 35(3) *Sydney Law Review*, 535; Andre Menache and Ray Greek, 'Systematic Reviews of Animal Models: Methodology versus Epistemology' (2013) 10(3) *International Journal of Medical Sciences*; Peter Tatchell, *Why Animal Research is Bad Science* (New Statesman, 2004), 18-19; Annalea Pippus, Lawrence A Hansen and Ray Greek, 'The Nuremberg Code Subverts Human Health And Safety By Requiring Animal Modeling' (2012) 13(16) *BMC Medical Ethics*.

a carcinogen to induce cancer for the purposes of finding a cure for cancer.²⁰ While the mice were cured of the cancer, it has not worked in humans.²¹

2. Animal research for the purpose of finding a safe and effective vaccine for curing and preventing HIV/AIDS would be high on scale of legitimacy due to its overwhelming public health impact.²² However, when chimpanzees were initially infecting chimpanzees with the HIV virus, they did not experience influenza-like symptoms of the infection as humans do, and as such, their use in the research was proven to be unnecessary and unhelpful.²³ As such, recent alternate research developments have 'rendered chimpanzees largely unnecessary as research subjects.'²⁴
3. TGN 1412, an immunomodulatory drug, caused 'catastrophic systemic organ failure' in the volunteers it was injected into in 2006. No such effect was found during previous research on rats, mice, rabbits and non-human primates.²⁵
4. A vaccine, first tested on animals, was found to expose women to increased risks of developing stroke and breast cancer.²⁶ This was not found in the mice or non-human primates that it was first tested on.²⁷

Overall, 'unanticipated human toxicity' is responsible for the failure of almost half of clinical trials of new pharmaceuticals.²⁸ This reveals that while chemicals, pharmaceuticals and procedures can have one effect in animals, the outcome can be very different and at times, detrimental, to humans.²⁹

These are only a few examples amongst many which exemplify the difficulty in making inferences about what will happen to humans based on conclusions reached from animal-based research. Indicative of a (slow but gradual) shift from the consequentialist thinking that animal suffering can justify the means, as discussed above, are also evident in the developments in Australia to ban cosmetic testings on animals,³⁰ as well as

²⁰ Annapoorni Rangarajan and Robert A Weinberg, 'Comparative Biology Of Mouse Versus Human Cells: Modelling Human Cancer In Mice' (2013) 3(12) *Nature*, 952-9; Kenneth R Hess, 'Statistical Design Considerations In Animal Studies Published Recently In Cancer Research' (2011) 71(2) *Cancer Research*, 625.

²¹ *Ibid.*

²² Lena J Gamble and Qiana L Matthews, 'Current Progress In The Development Of A Prophylactic Vaccine For HIV-1' (2010) 5 *National Center for Biotechnology Information*; Tania Rivera-Hernandez, 'The Contribution of Non-human Primate Models to the Development of Human Vaccines' (2014) 19 *Discovery Medicine*.

²³ Robert C Jones, 'A Review of the Institute of Medicine's Analysis of using Chimpanzees in Biomedical Research' (2013) 20(2) *Science and Engineering Ethics*, 481-504; Andre Menache and Ray Greek, 'Systematic Reviews of Animal Models: Methodology versus Epistemology' (2013) 10(3) *International Journal of Medical Sciences*; Lena J Gamble and Qiana L Matthews, 'Current Progress In The Development Of A Prophylactic Vaccine For HIV-1' (2010) 5 *National Center for Biotechnology Information*.

²⁴ Institute of Medicine of the National Academies, *Chimpanzees in Biomedical and Behavioural Research, Assessing the Necessity* (15 December 2011).

²⁵ *The Flaws and Human Harms Article*, 412-413.

²⁶ *The Flaws and Human Harms Article*, 412-413.

²⁷ *The Flaws and Human Harms Article*, 412-413.

²⁸ *Limitations Study*, 846.

²⁹ *Limitations Study*, 846.

³⁰ Department of Health, *Ban on the use of animal test data for cosmetics* (24 April 2020), Australia Government <<https://www1.health.gov.au/internet/main/publishing.nsf/Content/ban-cosmetic-testing-animals>>.

calling for more transparency for use of animals in medical testing.³¹ This is further evidence of the failure of animal research and testing to produce any predictive value for human trials, thereby illustrating the unnecessary suffering that animals go through for no scientific progress.³²

With respect to the ethics of animal research, significant distress and pain to the animal is caused. Various substantial stressors exist in laboratory settings for animal subjects.³³ Stressors can be as a result of the trauma in animal subjects captured from the wild to supply laboratory or breeding centres, or from unnatural laboratory housing and environments, or simply because of the nature of the animal research method, whether it is invasive and/or routinely by handling, gavaging and blood sampling.³⁴ Whether testing is conducted into their eyes, down their throats or onto their sensitive exposed skin; rabbits, guinea pigs, mice and rats are regularly subjected to negative side effects as a result of chemical research.³⁵ Certain medical treatments have caused liver tumours and toxicity in the animals the drugs were first tested on.³⁶ Psychological experiments also have significant health impacts on animals being tested on. One psychological study, which involved isolating primates, led to them engaging in harmful behaviour such as self-mutilation, biting and ripping out their hair.³⁷ Exposure to abnormal conditions also has significant health impacts. Animals in confinement suffer stress and anxiety, and physical declines in health.³⁸ Unsurprisingly, electric shock research can result in significant pain to the animal.³⁹ All of the mentioned research and teaching activities have the potential to cause serious health repercussions. In the Committee's submission, these consequences to the physical and mental welfare of animals are unacceptable noting the sentient nature of animals by virtue of their ability to subjectively feel and perceive the world around them.⁴⁰

While NSW leads Australia in having a separate law for animal research, the ARA directs the relevant authority back to the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (Code)*, which

³¹ Calla Wahlquist, *Sydney baboon escape: the questions that remain* (26 February 2020), The Guardian <<https://www.theguardian.com/science/2020/feb/26/sydney-baboon-escape-questions>>; Natalie O'Brien, *Millions of animals around Australia subjected to experiments and surgery* (30 January 2016), Sydney Morning Herald <<https://www.smh.com.au/environment/conservation/millions-of-animals-around-australia-subjected-to-experiments-and-surgery-20160129-gmgown.html>>; Humane Research Australia (2016) <<http://www.humaneresearch.org.au/statistics/>>.

³² Michelle Kretzer, *Experiments on animals fail 90% of the time. Why are they still done?* (31 January 2018), People for the Ethical Treatment of Animals <<https://www.peta.org/blog/experiments-on-animals-fail-90-of-the-time-why-are-they-still-done/>>.

³³ Andrew Knight, *The Costs and Benefits of Animal Experiments* (Palgrave Macmillan, 2011), 42.

³⁴ *Ibid.*

³⁵ Peta Australia, *How Cruelty-Free are your Cosmetics?* <<https://www.peta.org.au/living/how-cruelty-free-are-your-cosmetics/>>.

³⁶ Akhtar, Aysha, 'The Flaws and Human Harms of Animal Experimentation' (2015) 24 *Cambridge Quarterly of Healthcare Ethics* 407–419 ('*The Flaws and Human Harms Article*').

³⁷ McLeod, S. A, '*Attachment theory*' (2017) Simply Psychology. <<https://www.simplypsychology.org/attachment.html>> and Katherine Bayne, 'Potential for Unintended Consequences of Environmental Enrichment' (2005) 46(2) 130. Accessed from <<https://academic.oup.com/ilarjournal/article/46/2/129/910037>>

³⁸ *The Flaws and Human Harms Article*, 408.

³⁹ Penn State Animal Resource Program, *Use of Electric Shock in Research Animals*, (30 April 2014) <<https://www.research.psu.edu/arp/experimental-guidelines/rodent-behavioral-tests-1/use-of-electric-shock-in-research-animals.html>>

⁴⁰ See the Committee's response to Question 1 of this submission.

outlines general principles in which experiments should take place. The categories have been criticised by Katrina Sharman, the first Corporate Counsel of Voiceless: the animal protection institute, as being 'so broad that it is hard to think of an example of an experiment that would not fall within them.'⁴¹ Katrina also comments that 'while the Code does seem to require the balancing of the predicted scientific/educational value of that project with its effects on animal welfare ... it is difficult to see how animals could emerge victorious from this cost benefit analysis given the widespread faith in the current test model and the classification of animals as mere legal 'things'.⁴²

The Committee submits that available alternatives to animal research are often a more sophisticated way to attempt to address a particular scientific question, and often more efficient, accurate than the means they replace.⁴³ Human clinical studies, such as for micro-dosing purposes, can be used whereby (voluntary) human participants are given 'low quantities of a drug to test the effects on the body on the cellular level'⁴⁴ without it affecting the entire human body system. Further examples of alternatives include using human stem cells for basic research, or *in vitro* (test tube) research using human tissue.⁴⁵ Other effective alternatives include cell, tissue and organ engineering which can be used for testing drug toxicity; or using human bodies donated to science for the purposes of sourcing information about the human body, disease processes and other medical questions.⁴⁶ The implementation of such alternative methods would better achieve the objectives of POCTA by preventing cruelty to animals, and promoting the welfare of animals by 'requiring a person in charge of an animal to provide care for the animal, and (to treat the animal in a humane manner, and to ensure the welfare of the animal'.⁴⁷

The Committee considers the defences set out in POCTA run counter to the express objects of the Act, and that allowing defences to cruelty as per the ARA appears to protect the interest of scientific research over animal welfare despite the available alternatives to animal research which do not gamble scientific integrity and ethics.

⁴¹ K, Sharman, 'Opening the laboratory door: national and international legal responsibilities for the use of animals in scientific research – an Australian perspective' (2006) *Journal of Animal Law* 2, 67 at 31.

⁴² *Ibid.*

⁴³ Katrina Sharman, 'Opening the Laboratory Door: National and International Legal Responsibilities for the Use of Animals in Scientific Research' (2006) 2 *Journal of Animal Law*, 67; David DeGrazia, 'The Ethics of Animal Research: What are the Prospects for Agreement?' (1999) 8(1) *Cambridge Quarterly of Healthcare Ethics*, 28

⁴⁴ Peter Tatchell, *Why Animal Research is Bad Science* (New Statesman, 2004), 19.

⁴⁵ Jean Greek and Ray Greek, 'Is The Use Of Sentient Animals In Basic Research Justifiable?' (2010) 5(14) *Philosophy, Ethics, and Humanities in Medicine*, 12; David DeGrazia, 'The Ethics of Animal Research: What are the Prospects for Agreement?' (1999) 8(1) *Cambridge Quarterly of Healthcare Ethics*, 28.

⁴⁶ Peter Tatchell, *Why Animal Research is Bad Science* (New Statesman, 2004), 19; David DeGrazia, 'The Ethics of Animal Research: What are the Prospects for Agreement?' (1999) 8(1) *Cambridge Quarterly of Healthcare Ethics*, 28; Jean Greek and Ray Greek, 'Is The Use Of Sentient Animals In Basic Research Justifiable?' (2010) 5(14) *Philosophy, Ethics, and Humanities in Medicine*, 12.

⁴⁷ *Prevention of Cruelty to Animals Act 1979* (NSW), s 3.

3. Should additional species be included in the definition of ‘animal’ and therefore covered by animal welfare provisions (for example, cephalopods, crustaceans in all situations, other species)? Why?

The Committee's view is that the definition of ‘animal’ is unnecessarily narrow.⁴⁸ It makes arbitrary distinctions that fail to reflect current scientific knowledge regarding the sentience of animals.⁴⁹ The Committee submits that all sentient species should be included in the definition of ‘animal.’

Cephalopods have the capacity to experience pain and suffering through the free nerve endings in their skin.⁵⁰ Their complex nerve system, display of advanced behaviours and documented intelligence⁵¹ all suggest that animal welfare legislation should extend to these animals.

Protection should also extend to crustaceans in all situations. The physiology of a crustacean does not change whether they are killed on a boat or in a building or place.⁵² While some argue that a crustacean's sentience is not conclusively established, this should be answered by applying the precautionary principle pending further evidence.⁵³ In this respect, the National Aquaculture Council Inc has already recognised that crustaceans experience pain by issuing guidelines for their humane killing.⁵⁴

Octopus, squid, cuttlefish, lobster, crab and crayfish in particular need urgent legal protection because they are used widely for human consumption as fishing bait and in scientific research.⁵⁵ During these processes, they are prone to stress or injury during catching, handling, storing and killing.⁵⁶

⁴⁸ Current definition of “animal” as stated in POCTA is:

(a) a member of a vertebrate species including any:

- (i) amphibian, or
- (ii) bird, or
- (iii) fish, or
- (iv) mammal (other than a human being), or
- (v) reptile, or

(b) a crustacean but only when at a building or place (such as a restaurant) where food is prepared or offered for consumption by retail sale in the building or place.

⁴⁹ The Animal Law Institute, Submission No 25 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (9 March 2018) 2.

⁵⁰ N.A. Moltschanivskyj et al, ‘Ethical and welfare considerations when using cephalopods as experimental animals’ (2017) 17 *Reviews in Fish Biology and Fisheries* 455, 457.

⁵¹ Bernd Ulrich Budelmann, ‘The cephalopod nervous system: what evolution has made of the molluscan design’ in O. Breidback and W. Kutsch (eds), *The Nervous Systems of Invertebrates: An Evolutionary and Comparative Approach* (Birkhauser, 1995) 115.

⁵² Australian Veterinary Association, Submission No 32 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (2018) 3.

⁵³ Advocates for Animals, *Cephalopods and Decapod Crustaceans: Their capacity to experience pain and suffering* (Report, 2005) 5.

⁵⁴ National Aquaculture Council Inc, *Aquatic Animal Welfare Guidelines: Guidelines on welfare of fish and crustaceans in aquaculture and/or in live holding systems for human consumption* (Report, 31 March 2004).

⁵⁵ Advocates for Animals, *Cephalopods and Decapod Crustaceans: Their capacity to experience pain and suffering* (Report, 2005) 3.

⁵⁶ *Ibid.*

The Committee submits that any argument that including crustaceans and cephalopods will limit fishing practices, is not supported by biological science as discussed above. Appropriate exemptions can be included for legitimate fishing. This is how Queensland, Victoria and Tasmania aim to protect fishing activities whilst also guarding sentient animals from cruelty.⁵⁷ Furthermore, NSW and the ACT already take this approach to fish.⁵⁸ NSW has a thriving fishing industry, both commercial and recreational, which is not inhibited by the inclusion of fish in welfare laws.⁵⁹

In terms of cross-State fishing practices, it is logical for NSW to adopt a definition of 'animal' which is consistent with jurisdictions that already afford protection to these additional species. For example, cephalopods are protected in the Northern Territory (NT), Queensland and Tasmania, while crustaceans have protection at all times in NT and Victoria. This would make the legislation nationally consistent.

4. Should a consistent definition of 'animal' be used across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986? Why?

Sentient species should be protected from cruelty, regardless of the way in which they live or are kept.⁶⁰ It is submitted that using sentience as the uniform criteria by which 'animal' is defined and therefore protected across all NSW legislation provides a clear and stable parameter, aiming to ensure that all beings that are capable of suffering are protected from cruelty regardless of their function, use or cognitive ability.⁶¹ Failure to achieve uniformity essentially undermines the rationale of the law.⁶² It is a form of speciesism⁶³ to say that some animals deserve protection all the time, and others do not; for example, when it relates to entertainment or research.⁶⁴

The Committee submits that a consistent definition would harmonise NSW's conflicting laws, both within NSW and with other states, and reflect the community's position. Benefits include consistency in the obligations, enforcement, prosecution, and sentencing of offences. This will, in the view of the Committee, allow greater

⁵⁷ RSPCA, Submission No 28 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (9 March 2018) 5.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Animals Australia, Submission No 17 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (8 March 2018) 3.

⁶¹ World Society for the Protection of Animals, *Acknowledging sentience: giving meaning to animal welfare* (Report, September 2012) 3.

⁶² *Ibid.*

⁶³ Speciesism is discrimination which involves treating members of one species as morally more important than members of other species.

⁶⁴ *Ibid.*

levels of protection for all animals. Having a consistent definition of animal would also streamline the opportunities for reform as community expectations develop over time.⁶⁵

In particular, cephalopods are already protected in the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes*, and therefore, should be incorporated at least in the ARA and preferably across all three Acts.

Further, retaining inconsistent definitions is likely to make it difficult for an individual to know whether particular conduct in relation to a particular animal amounts to an offence. Mistaken beliefs about whether an animal is protected could accordingly result in unnecessary harm coming to an animal.

5. Do you have any comments on how ‘cruelty’ is currently defined within the *Prevention of Cruelty to Animals Act 1979*?

The definition of cruelty⁶⁶ should incorporate a reference to sentience⁶⁶, as referred to above. This would provide a strong basis for effective welfare laws by indicating a reason for the legal protection of animals.

Legal recognition of sentience also helps separate animals from objects, which do not feel or perceive anything. Although animals currently have the legal status of property, sentience emphasises their intrinsic value and special status. Public morality requires the clear distinction in law of the welfare requirements of animals as opposed to objects. A reference to sentience provides this symbolic gesture.⁶⁷

Recent amendments to Section 6A of the *Animal Welfare Act 1992* (ACT) have changed the definition of cruelty as follows [emphasis added]:

*‘... doing, or not doing, something to an animal that causes, or is likely to cause, injury, **pain, stress** or death...’*

The recognition of sentience through reference to pain and stress should be adopted in NSW. Pairing this with an explicit reference to the concept of sentience in the Objects of that Act (as it is in the ACT) will set a clear spirit for the POCTA.

⁶⁵ Voiceless, Submission No 8 to the Senate Rural and Regional Affairs and Transport Committee, *Inquiry into the Voice for Animals (Independent Office of Animal Welfare) Bill 2015* (14 August 2015) 4.

⁶⁶ Current definition of “cruelty” as stated in s 4(2) of POCTA is:

(2) For the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:

(a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated,
(b) over-loaded, over-worked, over-driven, over-ridden or over-used,
(c) exposed to excessive heat or excessive cold, or
(d) inflicted with pain.

⁶⁷ RSPCA, Submission No 28 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (9 March 2018) 4.

The definition section of an Act is used for primary interpretation and provides guidance on the broader intent. When a defined word is used in the text of legislation, the words of the definition will be read into the substantive enactment and is construed accordingly.⁶⁸ Thus the effect of recognising sentience in the definition of cruelty is that it will indicate the spirit of the legislation and inform interpretation of the operative provisions.

6. Would you support introducing a minimum standard of care into the new animal welfare laws?

The Committee supports introducing a minimum standard of care into the new laws.

In protecting animal welfare, the Issues Paper correctly highlights the importance of introducing proactive language, rather than reactive. The use of 'fail to provide' provisions in POCTA⁶⁹ means that it is geared towards punishing behaviour that has reached the stage of failing to provide for the animal. That is, it is reacting to poor behaviour, rather than looking to prevent it in the first place. Conversely, introducing a duty of care is proactive and is a directive which protects animal welfare, rather than punishing cruel behaviour.

As highlighted in the Issues Paper, it is imperative that the language used in legislation is precise and the law well defined;⁷⁰ the risk of not doing so being that it more people disobey the duty. The Committee submits that using words such as 'reasonable'⁷¹ or 'appropriate'⁷² to describe a duty to care for animals poses a problem. These terms are subjective and vague, and in turn do not necessitate a strict standard to be met. In some attempt to resolve the ambiguity, the NSW legislation sets the period of 24 hours as a marker (for instance failing to provide an animal with food in 24 hours is evidence of failing to provide sufficient food).⁷³ Setting a timeframe is one way to set the standard. Another way is to strictly define *who* or *what* determines what is 'reasonable' or 'appropriate.' New Zealand has done this, in that the obligation to ensure animals is met when their needs is satisfied according to 'scientific knowledge.'⁷⁴ Ideally, a body or organisation that is purely focused on, and knowledgeable in, animal welfare would be the most appropriate at assessing and setting the standard of what is a 'reasonable' provision of animal care. Such bodies could include the RSPCA, Animal Welfare League NSW, the International Fund for Animal Welfare, and World League for Protection of Animals.

The Committee supports introducing a minimum standard of care to the new animal welfare laws and notes the importance of setting an objective standard which the provision of animal welfare must meet.

⁶⁸ *Kelly v R* [2004] HCA 12; (2004) 218 CLR 216 at [103].

⁶⁹ *Prevention of Cruelty to Animals Act 1979* (NSW) ss 8 & 9.

⁷⁰ Animal Protection Index, *Austria Recognition of Animal Sentience and Prohibition of Animal Suffering* (10 March 2020) <<https://api.worldanimalprotection.org/country/austria>>.

⁷¹ *Animal Care & Protection Act 2001* (QLD) s 17 and *Prevention of Cruelty to Animals Act 1979* (NSW) ss 5(3)(a) & (b) and 8(1).

⁷² *Animal Protection Act 2018* (NT) s 6(b) s 6(1)(a-g).

⁷³ *Prevention of Cruelty to Animals Act 1979* (NSW) s 8(3).

⁷⁴ *Animal Welfare Act 1999* (NZ) s 10.

7. Do you have any comments on using existing ‘fail to provide’ provisions under the *Prevention of Cruelty to Animals Act 1979* as a basis for a minimum standard of care?

The Committee proposes that the current ‘fail to provide’ provisions can form a basis of a minimum standard, but that it needs to be further developed.

It is important that the below provisions, currently included in POCTA, form the basis of the minimum standard:

1. The provision of food, water and shelter;⁷⁵
2. The provision that animals be exercised;⁷⁶
3. The provision of veterinarian treatment;⁷⁷ and
4. The provision for the alleviation of pain.⁷⁸

The Committee recommends that the following additions be implemented together with the above provisions, to create the minimum duty of care:

1. Clean and hygienic living conditions - That the provision dealing with shelter also covers *living conditions* (as exists in the NT legislation).⁷⁹ This is so that all living arrangements can be covered. Including this provision also requires that the shelter and living conditions are clean and hygienic (as appears in the ACT animal welfare legislation).⁸⁰
2. Confined or restrained - That a provision be included that requires that an animal not be confined or restrained unreasonably (see NT’s *Animal Protection Act*).⁸¹ This could be added to the current provision about tethering, in POCTA.⁸²
3. Handled - That a provision be added that mandates that an animal when required to be physically handled, be handled appropriately and with care (see NT’s *Animal Protection Act*).⁸³ This means in a way that does not cause *unnecessary distress or pain* (see New Zealand’s *Animal Welfare Act*).⁸⁴

⁷⁵ *Prevention of Cruelty to Animals Act 1979* (NSW) s 8(1).

⁷⁶ *Prevention of Cruelty to Animals Act 1979* (NSW) s 9.

⁷⁷ *Prevention of Cruelty to Animals Act 1979* (NSW) s 5(3)(c).

⁷⁸ *Prevention of Cruelty to Animals Act 1979* (NSW) s5(3)(b).

⁷⁹ *Animal Protection Act 2018* (NT) s 6(b).

⁸⁰ *Animal Welfare Act 1992* (ACT) s 6B(1)(e).

⁸¹ *Animal Protection Act 2018* (NT) ss 6(f) & 4 definitions (“confine”).

⁸² *Prevention of Cruelty to Animals Act 1979* (NSW) s 10(1).

⁸³ *Animal Protection Act 2018* (NT) s 6(e).

⁸⁴ *Animal Welfare Act 1999* (NZ) ss 10 & 4(d).

4. Groomed and maintained - That a duty to groom and maintain the animal be added (see NT's *Animal Welfare Act*).⁸⁵ Animals can suffer heat stress, painful skin conditions, infestations of fleas and ticks and infection if not properly groomed.⁸⁶
5. Display normal patterns of behaviour - That a duty to allow an animal to display normal patterns of behaviour be added. This has been implemented in Queensland's,⁸⁷ New Zealand's⁸⁸ and the United Kingdom's⁸⁹ various animal welfare legislation. Research evidences how crucial it is to an animal's welfare to be able to express their natural patterns of behaviour.⁹⁰
6. Socialisation - That a provision be included which satisfies an animal's need for *regular socialisation*, be implemented (for an example see Austria's animal protection laws).⁹¹ Socialisation should encompass contact with people, other animals, and different environments.⁹² Research demonstrates that socialisation is an inherent part of maintaining an animal's welfare.⁹³

The Committee recommends that the above provisions be added to current 'failure to provide' provisions, to create one duty of care.

8. Do you have any suggestions about how the definition of pain could be updated?
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The Committee submits that the definition of pain should be made clearer to contemplate both the physical and mental aspects of pain. The current definition, and the indicators of suffering and distress, fail to refer to psychological suffering. The Committee submits that this is too narrow and ignores an entire element of an animal's sentient experience. The Five Freedoms acknowledge the potential for mental suffering and refer to ensuring conditions and treatment which avoid this.⁹⁴ To the extent that animals are under human control,

⁸⁵ *Animal Protection Act 2018* (NT) s 6B(1)(f).

⁸⁶ RSPCA Victoria RSPCA, *Benefits of Grooming*, (2020) <<https://rspcavic.org/health-and-behaviour/tips-for-a-happy-pet-and-owner/benefits-of-grooming>>.

⁸⁷ *Animal Care & Protection Act 2001* (QLD) s 9(a)(iii).

⁸⁸ *Animal Welfare Act 1999* (NZ) s 10(c).

⁸⁹ *Animal Welfare Act 2006* (UK) s 9(2)(c).

⁹⁰ X Manteca, E Mainau, D Temple, 'What is Animal Welfare? The Farm Animal Welfare Fact Sheet,' *Farm Animal Welfare Education Centre* (June 2012) <<https://www.fawec.org/en/fact-sheets/28-general-welfare/106-what-is-animal-welfare>>.

⁹¹ *Animal Welfare Act 2004* (Austria) article 13.

⁹² JSJ Odendaal, 'Science based assessment of animal welfare: companion animals' (2005) *Scientific and Technical Review of the Office of Epizootics* <http://www.ethology.co.za/Science-based_Assessment_of_Animal_Welfare_-_Companion_Animals.pdf> ('*Science based assessment of animal welfare article*') 21.

⁹³ *Science based assessment of animal welfare article*, 20.

⁹⁴ The Five Freedoms include freedom from hunger and thirst; from discomfort; from pain, injury or disease; freedom to express normal behaviour; and freedom from fear and distress. See RSPCA, 'What are the Five Freedoms of animal welfare?' (2019) <<https://kb.rspca.org.au/knowledge-base/what-are-the-five-freedoms-of-animal-welfare/>>.

humans are obligated to uphold these principles.⁹⁵ Their recognition is central to achieving good animal welfare.⁹⁶

The importance of clarifying the definition is shown by the term 'pain' being used regularly throughout POCTA in reference to offences. Failing to recognise psychological pain equates to a loss of enforcement; it limits the contexts in which causing pain is a punishable offence to instances where an animal suffers demonstrable physical pain.⁹⁷ The expansion of the definition would ensure Courts do not give the term 'pain' an unreasonably restrictive meaning.⁹⁸

Psychological pain is more difficult to identify due to the lack of visible symptoms, and also differs across specie. This may make it challenging to enforce consistently and objectively. To counteract this, psychological pain should be measured by behavioural indicators. The *Animal Welfare Act 2002 (WA)* refers to harm as including distress 'evidenced by severe, abnormal physiological or behavioural reactions.' This alludes to psychological pain and, importantly, can apply differentially to all species, depending on what their 'normal' behaviour would be.

If anything, the difficulty with identifying mental suffering is all the more reason for it to be included. It is important that POCTA alerts the public to 'unseen' suffering, provides a reason for inspectors to undergo further training to recognise this form of pain, and ensures offenders face penalties. In addition, the expanded definition could force individuals to pay greater attention to the physical confines of their animals; environment being necessarily connected to mental wellbeing.

10. Are there any activities currently considered as research or teaching activities under the *Animal Research Act 1985* that should be excluded? If so, why?

It is the Committee's position that none of the activities be excluded for the time being. If the activities are excluded from the list of 'research or teaching activities,' the Committee is concerned that they will continue, unchecked and unregulated. This is problematic, since all of the activities currently conducted for the purposes of 'research or testing,' have drastic physical and emotional repercussions on the animals used. Ideally, the Committee submits that all of the activities should be phased out, as there is strong evidence to suggest that animals and humans react differently to the same drugs and stimuli as discussed above. However, until such

⁹⁵ Lawyers for Animals, Submission No 34 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (20 March 2018) 4.

⁹⁶ Explanatory Statement, Animal Welfare Legislation Amendment Bill 2019 (ACT) 2.

⁹⁷ Animals Australia, Submission No 17 to the Social Policy Scrutiny Committee, *Inquiry into the Animal Protection Bill* (8 March 2018) 3.

⁹⁸ RSPCA, *Animal Welfare Legislation Amendment Bill 2019* (Comments, 8 February 2019) 7
<<https://kb.rspca.org.au/wp-content/uploads/2019/10/2019-02-08-RSPCA-comments-on-ACT-Animal-Welfare-Legislation-Amendment-Bill-2019.pdf>>.

time, the Committee suggests that the research activities and teaching activities remain in the ARA to ensure they are properly regulated.

The Committee has set out in detail in its response to Question 2 above, the flawed assumptions about animal testing and its severely detrimental effects on animals. Accordingly, in the Committee's submission, must remain heavily regulated under the ARA. In light of both the poor results of animal testing for research, and the significant harm to the animal subjects caused by all current research and teaching activities as defined in the ARA, it must remain heavily regulated. Looking forward, the Committee suggests that the new welfare regulations encourage a move away from, and ban of, testing on animals, to favour alternative and more effective methods of research and teaching.

11. Are there any additional activities that should be considered as research or teaching activities under the *Animal Research Act 1985*? If so, why?

The Committee submits that the focus should not be on adding further fields of research to the ARA, but rather, on reducing and phasing out research being conducted on animals, as submitted above. It is recommended that a similar provision to what is in Sweden's animal welfare laws⁹⁹ be implemented in NSW animal welfare legislation. This would enforce the position that animals should not be used for the purpose of research or teaching activities, if there is expert evidence identifying an alternative which achieves the same purpose.¹⁰⁰

There is growing evidence of promising alternatives to animal research¹⁰¹ which are more reliable and less costly as animal research.¹⁰² These substitute methods are being embraced by countries around the world. The National Committee for the Protection of Animals in the Netherlands is working towards safely eliminating the testing of 'chemicals, food ingredients, pesticides and veterinary medicines' on animals by 2025.¹⁰³ It is promising that federally, Australia is moving towards the banning of animal testing for example by way of the introduction of The Industrial Chemicals Act 2019. It is recommended that changes be made to NSW animal welfare legislation that echoes this changing sentiment and shift away from animal research, to focus on other available research options.

⁹⁹ *Experiments on Animals Act 1977* (Sweden) article 10 (accessed at <<https://api.worldanimalprotection.org/country/netherlands>>).

¹⁰⁰ *Experiments on Animals Act 1977* (Sweden) article 10 (accessed at <<https://api.worldanimalprotection.org/country/netherlands>>).

¹⁰¹ For alternatives, see:

- Cruelty Free International, (April 2018) 'Alternatives to Animal Testing', <<https://www.crueltyfreeinternational.org/why-we-do-it/alternatives-animal-testing>>;

- Van Norman article p 851; and

- The Humane Society of the United States, 'Alternatives to animal tests', (2020) <<https://www.humanesociety.org/resources/alternatives-animal-tests>>

¹⁰² The Humane Society of the United States, 'Alternatives to animal tests', (2020) <<https://www.humanesociety.org/resources/alternatives-animal-tests>>

¹⁰³ Animal Protection Index, *Netherlands Recognition of Animal Sentience and Prohibition of Animal Suffering* (10 March 2020) <<https://api.worldanimalprotection.org/country/netherlands>>.

12. Are there any activities currently included in the definition of 'exhibit' in the *Exhibited Animals Protection Act 1986* that should be excluded? If so, why?

The Committee submits that no activities currently included in the definition of 'exhibit' should be excluded, and proposes to include more activities as outlined in the Committee's answer to Question 13 below.

13. Are there any additional activities that should be included in the definition of 'exhibit' under the *Exhibited Animals Protection Act 1986*? If so, why?

The Committee proposes that:

1. animals exhibited in connection with the sale or intended sale of an animal should be an included activity in the definition, and not included as an exemption to the definition as it is currently; and¹⁰⁴
2. establishments which exhibit animals in connection to their business, such as on commercial premises which house aquariums, aviaries or animal pens, should also be subject to licensing requirements under the EAPA.

In NSW, pet stores are subject to the regulations of POCTA and the *Animal Welfare Code of Practice – Animals in Pet Shops (Pet Shop Code)*.¹⁰⁵ The Pet Shop Code recognises that animals in pet stores are limited in relation to their physical and social environments, and therefore there is a greater responsibility towards those animals and their environment.¹⁰⁶ Animals kept in pet store displays are subject to confined enclosures, which are erected for the purpose of proper viewing for buyers.¹⁰⁷ There are no regulations as to the length of time periods that animals can be kept in pet stores, or unaccompanied overnight/during closed periods, nor any consideration of key socialisation periods for young animals.

The Committee submits that also regulating the action of displaying animals for the purpose of sale, rather than just the outcome of animal cruelty under POCTA is the most efficient way of ensuring strong animal welfare outcomes, noting the sentient nature of animals.¹⁰⁸

Under the *Exhibited Animals Protection Act 1986 (EAPA)*, a license will not be issued unless an animal display establishment conforms to the standards prescribed.¹⁰⁹ The Committee submits that applying these standards to organisations such as pet stores and market sellers will deter the commercial sale of animals in pet stores.

¹⁰⁴ *Exhibited Animals Protection Act 1986*, s 5 definition of "exhibit."

¹⁰⁵ NSW Department of Primary Industries, *Animal Welfare Code of Practice: Animals in Pet Shops* (2008).

¹⁰⁶ *Ibid*, Preface.

¹⁰⁷ See above, n 13.

¹⁰⁸ See the Committee's response to Question 1 of this submission.

¹⁰⁹ *Exhibited Animals Act 1986* (NSW), s 15(1).

In 2010, the RSPCA advocated for compulsory registration and licensing systems for all outlets selling companion animals.¹¹⁰ In NSW, pet stores are subject to a self-licensing agreement that is overseen by industry associations such as the Pet Industry Association (PIAA). In 2019, the ACT passed legislative reform so that all pet stores are licensed and operating any pet business without a license or in breach of license is a strict liability offence.¹¹¹

The Committee submits that the phasing out of pet stores for the exhibit and sale of animals is best practice and aligns with community values. The correlation between pet shops and unregistered breeders, puppy farms and poor living conditions has been subject to an enquiry in NSW in 2016, with over 300 submissions received, including recommendations to ban the sale of dogs and cats in pet stores in order to remove avenues for irresponsible breeders to sell.¹¹²

In 2018, Victoria banned the sale of animals in pet stores unless they were from a registered shelter.¹¹³ In 2020, Western Australia passed legislation to outlaw purchasing puppies from pet stores, as well as providing assistance to pet shops to help them transition to dog and puppy adoption centres.¹¹⁴ The Committee submits the passing of similar legislation in NSW is essential and will phase out the need for pet stores in Australia, and thereby support good breeding practices and responsible pet ownership.

It is the Committee's position that exhibiting animals for sale enables irresponsible pet ownership by marketing animal companionship as a consumer item. There is already an oversupply of pets that have been abandoned and that are available for adoption. In 2017-2018, over 132,000 animals were received by RSPCA across Australia, and of those over 4,000 dogs were euthanised along with 12,000 euthanised cats.¹¹⁵

As noted above, in addition to pet stores, the Committee proposes that establishments which exhibit animals in connection to their business, such as on commercial premises which house aquariums, aviaries or animal pens, should also be subject to licensing requirements under the EAPA.

For example, hospitality venues which use animals are only subject to food, health and safety standards for the protection of customers and their food.¹¹⁶ The animals themselves are not subject to any licensing or regulations as the premise themselves are not specifically set up for animal exhibition.

¹¹⁰ RSPCA, *RSPCA Position Paper: Sale of companion animals from pet shops, adopted 22 February 2010* <<https://kb.rspca.org.au/wp-content/uploads/2019/01/PP-A4-Sale-of-companion-animals-from-pet-shops.pdf>>.

¹¹¹ *Animal Welfare Act 1992* (ACT), s 24R.

¹¹² Joint select committee on companion animal breeding practices in New South Wales, Parliament of New South Wales, *Inquiry into companion animal breeding practices in New South Wales* (2015), 5.13.

¹¹³ *Domestic Animals Amendment (Puppy Farm and Pet Shops) Act 2017* (Vic).

¹¹⁴ Australian Associated Press, *Western Australia to outlaw puppy farms* (10 February 2020), Port Lincoln Times <<https://www.portlincolntimes.com.au/story/6622024/western-australia-to-outlaw-puppy-farms/>>.

¹¹⁵ RSPCA National Statistics Australia 2017-2018
<https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202017-2018.pdf>.

¹¹⁶ Australia New Zealand Food Authority, Standard 3.2.2 Food Safety Practices and General Requirements (January 2001), clause 24 and Appendix 7.

It is important that establishments that use animals as secondary to their business activity are held to the same standards as establishments captured in the current definition of “exhibit”. That is, they comply with the licensing requirements to provide proper enclosures for animals that adhere to welfare standards so that their animals are protected from danger and thievery as had been occasioned in a petting zoo forming part of a Sydney café in 2013¹¹⁷ and another café in the Blue Mountains in 2015.¹¹⁸

The Committee submits that requiring licensing at these venues will enable a proactive approach in upholding animal welfare standards and ensures that businesses consider licensing standards before erecting animal displays, which purport only to attract revenue rather than also ensure animal welfare standards are met.

17. Do you have any comments on providing authorised inspectors with powers and tools (for example, being able to check compliance with an existing direction) to provide proactive support to help prevent adverse animal welfare outcomes?

The Committee supports a more proactive role for inspectors. This would be best achieved by coupling an augmentation of (for example) the duties of officers under POCTA with a number of the tools and compliance options suggested in the Issues Paper, including mandatory educational programs for offenders and compliance support.

Additional inspectors

The Committee has previously made a submission¹¹⁹ to the NSW Government in support of making more effective use of the non-governmental charitable organisations (**NGCOs**) that could contribute to animal welfare monitoring and enforcement. Presently, only the RSPCA and the Animal Welfare League contribute to this initiative. However, introducing other NGCOs (particularly those with species-specific knowledge) would capitalise on the specialisation and objectives of animal-oriented personnel in preventing adverse animal welfare outcomes.

Between 2010 and 2015, just over 900 animal cruelty-related offences were recorded by NSW Police Force.¹²⁰ However, in the 2013/14 financial year alone, the RSPCA received 58,591 complaints of animal cruelty and/or neglect.¹²¹ While this figure is a nationwide one, and some of those complaints led to the offences recorded

¹¹⁷ ABC News, *Police bring home the bacon: stolen Sydney café animals found in Victoria* (29 October 2013), ABC News <<https://www.abc.net.au/news/2013-10-29/stolen-sydney-cafe-animals-found-in-victoria/5051254>>.

¹¹⁸ Shuba Krishnan, *Petting zoo animals killed, and other injured in Blue Mountains dog attack* (29 July 2015), ABC News <<https://www.abc.net.au/news/2015-07-29/dogs-attack-animals-blue-mountains-cafe-petting-zoo/6655450>>.

¹¹⁹ NSW Young Lawyers Animal Law Committee, Submission to Select Committee on Animal Cruelty Laws in New South Wales, *Inquiry into Animal Cruelty Laws in New South Wales* 18 December 2019.

¹²⁰ Dimond, Juliet, ‘Act now on animal cruelty’ (May 2015) *Police Monthly* pp 8-10.

¹²¹ RSPCA Australia, *Submission on Criminal Code Amendment (Animal Protection) Bill 2015*, 12 March 2015.

by the NSW Police Force, ultimately, the RSPCA alone undertakes more law enforcement actions with respect to animal cruelty than all state and territory police forces and departments of primary industries combined.¹²²

The Committee submits that the NSW Police Force ought to occupy a supervisory role to allow day-to-day duties under POCTA to be discharged by willing and able NGCOs. The potential efficacy of this format is further exemplified in 2019 statistics showing that the Animal Welfare League NSW Inspectorate responded to upwards of 1,300 complaints and undertook nearly 2,000 investigations.¹²³ These investigations can then feed into more robust law enforcement by the NSW Police Force, as applicable. The incorporation of other NGCOs into this process would extend its coverage.

The broader use of NGCOs as a resource in the animal welfare regime (particularly POCTA) is an available, cost-effective means of addressing the state's animal welfare needs.¹²⁴

More proactive measures

The appeal of proactive mechanisms such as ongoing monitoring, education and compliance assistance is evident. Numerous animal cruelty breaches have previously been exposed by covert filming, photography and/or reporting of cruel practices, including in abattoirs, live export, animal agriculture and dog breeding.¹²⁵ This illustrates that animal welfare is often compromised if left unmonitored, unenforced or its violators are under-educated in respect of the matter.

Greater regulation and organisation of such proactive measures will provide greater oversight by qualified officials and allow those measures to operate more effectively. It would also serve as a clearer disincentive to would-be offenders and likely reduce recidivism.

18. Should the current provisions that require inspectors under the *Animal Research Act 1985* to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach? Please explain your answer.

As noted in the Issues Paper, a move towards a risk-based approach to inspector qualifications and powers is available. The Committee considers that to pursue this option would be to better equip inspectors (and those working with inspectors) to discharge their duties under the ARA.

¹²² Ibid.

¹²³ Animal Welfare League NSW, 'NSW Animal Cruelty Laws Under Review' (8 November 2019) <<https://www.awlnsw.com.au/have-your-say/>>

¹²⁴ Ellis, Elizabeth, 'Making sausages and law: the failure of animal welfare laws to protect both animals and fundamental tenets of Australia's legal system' (2010) 4 *Australian Animal Protection Law Journal* 6-26.

¹²⁵ Ibid.

In the Committee's view, a number of the powers of inspectors under section 50 of the ARA do not require veterinary qualifications. Matters such as equipment and documentation review, and the removal of samples do not need to exhaust the time available to the few veterinarians available under the ARA regime, and so to allocate these tasks to less qualified but, in the case of such tasks, equally capable, inspectors would free up the valuable resource of veterinarians for more demanding efforts.

Under such a mechanism, following the preliminary investigations or monitoring by non-veterinary inspectors, cases of particular concern or which display a higher level of risk of animal welfare being compromised can be escalated to more senior veterinary inspectors. Likewise, the Committee considers that it ought to be available to a broader range of public servants to escalate such matters to qualified veterinary inspectors in certain situations (that is, public servants who identify animal welfare concerns in areas of work not typically associated with such issues).

The set circumstances and thresholds that would activate a referral to a qualified veterinarian inspector should be a matter for further consideration, factoring in the available pool of prospective inspectors.

19. Noting the educational focus of Stock Welfare Panels, would you support further consideration of how the Stock Welfare Panel process could be applied to support better animal welfare outcomes in non-agricultural cases?

The Committee is supportive of extending the use and remit of Stock Welfare Panels (**SWPs**) in certain circumstances. However, this is subject to consideration of the suitability of that mechanism to certain animal welfare scenarios and a revision of the formulation of those SWPs.

Being in the relatively early stages of its use, it is not yet certain whether and to what extent the SWP program is effective in all areas to which it is applied; while a number of successes have been observed (as noted in the Issues Paper),¹²⁶ there have also been cases of significant failure and continued offending.¹²⁷ This conveys a need for further workshopping of SWPs in both their preparation and implementation.

Intensive agriculture is an area that is likely to be well suited to the SWP format. Given the existing use of the format in relation to depastured animals, it would appear a logical move to expand it to capture such animals, which can often benefit from the program, in other environments.

However, the Committee recommends that in order to effectively discharge their statutory function (i.e. one to improve animal welfare outcomes), the provisions governing the constitution of SWPs in Part 2B of POCTA and clause 31A of the Regulations be amended as follows:

¹²⁶ <https://www.theland.com.au/story/6539431/rspca-moves-on-cows-horses-sheep/>

¹²⁷ <https://www.rspcansw.org.au/blog/media-releases/statement-from-rspca-nsw-regarding-seizure-of-cattle-at-binnaway/>

1. Stock Welfare Panels should increase the representation of persons with a background in animal welfare, so as to ensure the SWP's focus is on welfare, rather than business, particularly in circumstances where that business is suspected of illegality.
2. The Local Land Services (**LLS**) and Departmental members of the SWP ought to have veterinary experience. Industry experience is insufficient for the purposes of improving welfare outcomes and, in any event, detracts from the welfare purposes of the SWP program and places the focus on matters of perceived business practicality and efficiency. This is contrary to the objects of POCTA.

The above issues raise serious concerns about administrative and governance issues that threaten the integrity and basic function of animal regulation in NSW. Conflicts of interest, a lack of transparency and the inadequate enforcement of the law all hover at the fringes of the current regime and can be readily addressed (in part) through the amendments recommended above.¹²⁸

20. Are there any specific issues you would like to raise as we review the penalties for all offences under the *Prevention of Cruelty to Animals Act 1979*, *Animal Research Act 1985*, and *Exhibited Animals Protection Act 1986*?

The Issues Paper highlights a number of inadequacies in the penalties under the NSW animal welfare regime. There is strong support for increasing statutory maximums, as current penalties do not align with community expectations.

A recent Animal Protection Index assessing the standards and efficacy of nations' animal welfare regimes gave a grade between A (strong) and G (poor).¹²⁹ Australia scored 'D' overall, a result worse than those recorded by India, Malaysia and Mexico, and considerably worse than the UK, New Zealand and Sweden.

While the above leads the Committee to the conclusion that a wide range of amendments is required in order to appropriately remedy this issue, it makes some specific recommendations here.

1. In accordance with the surveys outlined in the Issues Paper, Penalty Infringement Notices (**PINs**) ought to be increased in quantum. One option could be to bring them on par with PINs issued in relation to environmental offences, which are commonly in the order of \$15,000. The commonality of deterring and punishing acts against non-human victims and our natural resources is evident.

¹²⁸ Elizabeth Ellis, 'Bearing the burden: shifting responsibility for the welfare of the beast' (2013) 11 (4) *Macquarie Law Journal* 39.

¹²⁹ World Animal Protection, *Animal Protection Index* (Web page index)

https://api.worldanimalprotection.org/?_ga=2.118557833.1445315575.1510019261-923385865.1510019261#

2. In light of the punitive limits imposed on the Local Court, consideration should be given to escalating proceedings to a higher Court in cases of more than (notionally) two animal cruelty offences. This will provide a greater disincentive to potential repeat or prevalent offenders – there must be a punitive measure to ensure that committing numerous offences is worse than committing one.
3. Exemptions from liability for breaches of animal welfare laws are far too available. Notwithstanding that circumstances vary significantly in this area – an egg-laying hen is obviously very different to a wild fox – these differences ought not to be used as a blanket excuse from animal cruelty offences. Accordingly, the Committee submits that, *inter alia*:
 - a) The exemption from adequate exercise requirements under POCTA for stock animals under Section 9¹³⁰ lacks rationale and provides too easy an avenue through which animal carers can avoid their responsibilities. This is only exacerbated in the application of that exemption to animals confined to a cage, who are plainly in greater need of that exercise.
 - b) Section 24 of POCTA is far too broad. It provides comprehensive exemptions from the most substantive offences under POCTA to any animal being farmed, hunted, or prepared for consumption. There is no valid reason why those circumstances would justify otherwise entirely cruel practices being carried out against those animals. The section should be repealed.
 - c) If exemptions are considered necessary, they ought to be bespoke to the animal, the factual scenario envisioned and the particular offence. Provisions to the effect that any farmed, hunted or consumed animal cannot be a victim of a cruelty offence is, in the Committee’s view, wholly inadequate. If practices are deemed cruel, any deemed exemption must be specific and well justified.
 - d) The phrase “no unnecessary pain” in the context of Section 24 is too vague. The offences are already made out in that part of POCTA and, if they are considered unacceptable as against certain animals, they should not be watered down so heavily for others in such an imprecise manner.

The Committee cites hens as an example that particularly highlights its concerns. Hens display many of the same characteristics and requirements as dogs or cats – they are social, able to remember and identify people, have personal experiences, require physical activity and display physical, natural behaviours that can be prevented by way of Section 24 exemptions. To legislate in a manner that suggests that regardless of those commonalities, one species can be subject to a wide range of cruel (as defined in the legislation) practices while for the other it would be unacceptable, lacks a strong basis and is fundamentally inconsistent. This example highlights the problematic nature of the abovementioned exemptions when put into practice.

¹³⁰ *Prevention of Cruelty to Animals Act 1979* s 9(1A).

This is a concerning theme in animal cruelty and welfare legislation elsewhere in Australia as well. For example, the prohibition on animal testing for cosmetics at a Federal level displayed a number of ‘loopholes’ by which individuals and businesses might readily circumvent what would otherwise be a positive step for the improvement of animal welfare outcomes nationwide.¹³¹

While not an exhaustive list, the Committee considers the above matters to be of significant importance during a review of the NSW legislative regime.

21. Would you support consideration of a risk-based approach to licensing under the *Animal Research Act 1985* and/or *Exhibited Animals Protection Act 1986*, where it would not result in weakened protections for animals? Why?

The Committee supports a risk-based approach to licensing under both the ARA and EAPA, provided this is only the case where protections for animals are not weakened and resources are redirected to ensuring high-risk business are properly accredited and scrutinised.

Current legislation

Under the EAPA, it is an offence to exhibit certain animals without a license from the NSW Department of Primary Industries (**NSW DPI**). Licenses are available for fixed, mobile and off-display establishments.¹³² These licenses apply to a broad range of animals.¹³³

Under the ARA, it is an offence to conduct research on animals and/or supply animals for research purposes without proper accreditation.¹³⁴ Applications must be made to the Animal Ethics Committee for accreditation as an Animal Research Establishment.¹³⁵ In 2018, approximately 2.5 million animals were used for animal testing in NSW.¹³⁶

Risk-based approach

A risk-based approach could potentially be beneficial where resources are redirected away from low-risk activities, to the scrutiny of high-risk businesses. Risk-based approaches have been considered and introduced in a number of areas.

¹³¹ Be Cruelty-Free Australia, Submission No 15 to Senate Community Affairs Legislation Committee, Inquiry into Industrial Chemicals Bill 2017 and related Bills, 14 June 2017, 2.

¹³² EAPA (NSW) ss 7(1)(a)-(c).

¹³³ EAPA (NSW) sch 2.

¹³⁴ *Animal Research Act 1985* (NSW) pt 5.

¹³⁵ *Animal Research Regulation 2010* (NSW) pt 2 div 1.

¹³⁶ NSW Department of Primary Industries, *NSW 2018 Animal Use in Research Statistics* (Report, February 2020) 5.

Queensland has implemented a risk-based approach to animal exhibition licensing.¹³⁷ Under this legislation, licenses are still required; however, they are structured according to the relevant risk and relevant adverse effects:

Relevant risks relate to:

1. A risk to the welfare of any animal;
2. A biosecurity risk;
3. A risk to public safety, or of death, injury or illness to a person, caused directly by, or originating from, the exhibited animal.¹³⁸

Relevant adverse effects relate to:

1. The welfare of any animal;
2. The health, safety or wellbeing of a person; or
3. Social amenity, the economy and the environment.¹³⁹

The *Biodiversity Conservation Act 2016* (NSW), which regulates human-wildlife interactions, has also introduced a risk-based approach to licensing under which:

1. Low-risk activities are exempt from regulation;
2. Moderate-risk activities are regulated by enforceable codes of practice; and
3. High risk activities remain licensed.¹⁴⁰

The Environmental Defenders Office, NSW Wildlife Council Inc. and the NSW Young Lawyers Environment and Planning Committee¹⁴¹ have highlighted that in this case the removal of licensing in favour of a code of practice may reduce the capacity to adequately protect certain flora and fauna. In the case of the ARA and EAPA, the Committee does not support a risk-based approach which exempts or removes licensing altogether for animal exhibits or research, regardless of whether they are considered low or moderate-risk activities.

Even in lower-risk situations, it would be against the objects of the Acts, namely to protect the welfare of animals, to allow for businesses to operate outside of licenses. Without licensing, there may be difficulties in

¹³⁷ *Exhibited Animals Act 2015* (Qld).

¹³⁸ *Exhibited Animals Act 2015* (Qld) ss 17(1)(a)-(c).

¹³⁹ *Exhibited Animals Act 2015* (Qld) ss 17(2)(a)-(c).

¹⁴⁰ NSW Department of Planning, Industry and Environment, *About the Biodiversity Conservation Act 2016* (Web Page, 25 September 2019) < <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform> >.

¹⁴¹ Environmental Defenders Office, Submission to The Office of Environment and Heritage, *Proposed Wildlife Licensing Changes* (23 July 2018); NSW Wildlife Council Inc, Submission to The Office of Environment and Heritage, *Proposed Wildlife Licensing Changes*; NSW Young Lawyers Environment and Planning Committee, Submission to The Office of Environment and Heritage, *Proposed Wildlife Licensing Changes* (24 July 2018).

clearly identifying and enforcing exhibition and research requirements. This also may potentially increase the number of animals unnecessarily being held captive for the sake of entertainment or experimentation.

Instead the Committee supports a risk-based system which retains licensing, but categorises according to the risk posed:

1. to the welfare of any animal; and/or
2. the health, safety or wellbeing of any person; and/or
3. the environment.

As highlighted by the Queensland Explanatory Notes,¹⁴² a broad obligation is justified because of the difficulty in identifying all risks to the welfare of each animal, person and the environment.

A risk-based approach is appropriate in that it reflects the varied levels of risks that different businesses pose. However, this approach requires that:

1. Protections to animals are not reduced;
2. Licensing is still required for low and moderate risk businesses;
3. Resources are redirected to ensuring high risk businesses are properly accredited and scrutinised; and
4. Risk is measured according to the risk to animal welfare, people and the environment. This is as opposed to risk based on threat to biosecurity or the economy.

22. Which areas within the animal welfare legislative framework could be improved to reduce unnecessary red tape or make requirements clearer?

ARA

The ARA framework should be improved by way of clearer requirements regarding:

1. Reporting requirements and transparency; and
2. Prioritisation of release, rehabilitation and rehoming of research animals.

Currently, accredited research establishments (other than school-based establishments) and animal research authorities must complete yearly reporting.¹⁴³ Reporting of the “fate of an animal” is not mandatory unless that animal is a domestic cat or dog.¹⁴⁴ In 2018, approximately 0.6% of animals tested in NSW were reported to

¹⁴² Explanatory Notes, Exhibited Animals Bill 2015 (Qld) 6.

¹⁴³ *Animal Research Act 1985* (NSW) s24.

¹⁴⁴ *Animal Research Act 1985* (NSW) s24 (4).

'Remain free living in the wild or released to the wild.'¹⁴⁵ The fate of the other almost 2.5 million animals tested in NSW remains unaccounted for. Without these statistics, it is not possible to properly promote the welfare of these animals. The Animal Ethics Committee cannot measure and adjust processes in order to prioritise the release, rehabilitation or rehoming of animals.

Similarly, the lack of transparency to the broader public presents further accountability and transparency issues. This was highlighted by the public backlash and concern raised following the February 2020 baboon escape from the Royal Prince Alfred Hospital.¹⁴⁶ This lack of transparency means these facilities avoid scrutiny regarding the ethics of their experiments and their impact on public safety.

Secondly, neither the ARA nor the regulations have clear requirements to prioritise the rehoming, releasing and rehabilitating of research animals. The Australian Code of Practice for the Care and Use of Animals for Scientific Purposes states:

*'Opportunities to rehome animals should be considered wherever possible, especially when the impact of the project or activity on the wellbeing of the animal has been minimal and their physiological condition and behavioural attributes indicate that they can be introduced to a new environment with minimal, transient impact on their wellbeing.'*¹⁴⁷

Under the NSW DPI's Guidelines for the Care and Housing of Dogs in Scientific Institutions, 'euthanasia should only be considered if the impact of the experimental protocol prevents the animal being returned to a normal life, or if the dog cannot be satisfactorily socialised.'¹⁴⁸ The Animal Justice Party attempted to address this with the *Animal Research Amendment (Right To Release) Bill 2017*, which would have required that accredited research establishments take reasonable steps to rehome cats and dogs after the non-lethal research ends. This Bill failed on the basis that it should have been passed as a regulation, not legislation.¹⁴⁹

The ARA legislative framework could be improved by requiring the prioritisation of the rehabilitation, release or rehoming of research animals wherever possible. This would also require mandatory reporting on the fate of animals. In particular, this should be introduced for domestic dogs and cats, as well as other companion animals such as rabbits, mice, rats and guinea pigs.

¹⁴⁵ NSW Department of Primary Industries, *NSW 2018 Animal Use in Research Statistics* (Report, February 2020) 52.

¹⁴⁶ Rachel Clun, 'Baboon escape sparks calls for transparency in animal medical research', *The Sydney Morning Herald* (online, 26 February 2020) <<https://www.smh.com.au/national/baboon-escape-sparks-calls-for-transparency-in-animal-medical-research-20200226-p544kl.html>>.

¹⁴⁷ Australian Government National Health and Medical Research Council, *Australian code of practice for the care and use of animals for scientific purposes* (July 2013) cl 3.4.2.

¹⁴⁸ NSW Agriculture Animal Research Review Panel, *Guidelines for the Care and Housing of Dogs in Scientific Institutions* (1 March 1999) cl 13.4

¹⁴⁹ NSW Animal Justice Party, 'Right2Release', *Animal Justice Party* (online) <<https://nsw.animaljusticeparty.org/campaign/right2release/>>.

EAPA

The EAPA could be improved through banning the use of exotic animals in entertainment. For the purpose of this legislation, a circus is considered a mobile animal display establishment.¹⁵⁰ This would create a more consistent set of requirements across NSW, and would be reflective of national and international standards of animal welfare.

Within NSW, some of the councils which have introduced bans are Parramatta, Lismore, Wingecarribee, Newcastle, Blue Mountains, Warringah, Woollahra, Hornsby, Pittwater, Manly, Randwick, Ku-ring-gai, Northern Beaches, Lake Macquarie, Liverpool, Lismore and Camden.¹⁵¹ As well as this, the ACT has banned the use of exotic animals in entertainment.¹⁵²

As highlighted in the Committee's 2019 'Animals in Entertainment Factsheet':

"A study conducted in 2009 found that wild animals held in circuses suffer greatly, spending the majority of the day confined, about 1 to 9% of the day performing/training and the remaining time in exercise pens that are smaller than the minimum zoo standards for outdoor enclosures. The study concluded that non-domesticated animals considered suited to circus life should exhibit low space requirements, simple social structures, low cognitive function and an ability to be transported without adverse welfare effects. None of the most common species exhibited by circuses, such as elephants, lions and other large cats, meet this criteria."¹⁵³

The Committee submits that the EAPA requirements should be more consistent, clear and ethical by banning the use of exotic animals in circuses within mobile exhibition establishments. This would remove the confusion of operating within both council rules and state legislation.

23. Do you have any comments on what the role of panels and committees should be in supporting the new animal welfare legislative framework?

¹⁵⁰ *Exhibited Animals Protection Act* 1986 (NSW) s 22(2); *Exhibited Animals Protection Regulation* 2010 cl 3(1).

¹⁵¹ Mark Pearson, 'Second read speech – Exhibited Animals Protection Amendment (Prohibitions On Exhibition) Bill 2018' (Speech, 25 October 2018) <<https://markpearson.org.au/exotic-animals-and-circuses/>>; Tom Gotsis, *Exotic Animals in Circuses - E-brief Issue 2/2018* (October 2018) Parliament of NSW <www.parliament.nsw.gov.au/researchpapers/Documents/Exotic%20animals%20in%20circuses.pdf>; The power is provided for under the *Local Government Act* 1983 (NSW) ch 7.

¹⁵² *Animal Welfare Act* 1992 (ACT) ss 51-59A.

¹⁵³ NSW Young Lawyers, *Animals in Entertainment Factsheet* (online, September 2019) <https://www.lawsociety.com.au/sites/default/files/2019-12/LS3264_YL_FactSheet_Animal_Law_Entertainment.pdf> discussing Iossa, Harris, 'Are Wild Animals Suited to a Travelling Circus Life? Animal Welfare' (2009) 18 *UK Animal Welfare* 129-140

The Animal Ethics Committee, Animal Research Review Panel and the Exhibited Animals Advisory Committee should increase the representation of persons with a background in animal welfare.

The Animal Ethics Committee does have rules relating to representation: “Categories C and D must together represent at least one-third of the AEC membership.”¹⁵⁴ Category C relates to an individual with a demonstrated history in animal welfare,¹⁵⁵ while category D requires an independent person.¹⁵⁶ Applications are decided according to the Animal Research Review Panel, which is similarly comprised of an equal representation of industry, government and animal welfare.

The Committee submits that a background in animal welfare is vital to making decisions about animal research, a practice which requires sentient creatures to endure often a lifetime of captivity and experimentation. Taking into account the issues raised in Question 22 above, it is clear that there needs to be a stronger focus on animal welfare and this can be supported through greater representation.

Similarly, the Exhibited Animals Advisory Committee faces representation issues. One out of six members must be selected ‘by the Minister from persons nominated by prescribed animal welfare organisations.’¹⁵⁷ This percentage does not accurately reflect the welfare concerns caused by animal captivity and exhibition.

¹⁵⁴ Australian Government National Health and Medical Research Council, *Australian code of practice for the care and use of animals for scientific purposes* (July 2013) cl 2.2.8.

¹⁵⁵ Australian Government National Health and Medical Research Council, *Australian code of practice for the care and use of animals for scientific purposes* (July 2013) cl 2.2.4 (iii)

¹⁵⁶ Australian Government National Health and Medical Research Council, *Australian code of practice for the care and use of animals for scientific purposes* (July 2013) cl 2.2.4 (iv)

¹⁵⁷ NSW Department of Primary Industries, *Guidelines for Exhibited Animals Advisory Committee Members* (August 2014) cl 3.1.1 (e).

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission.

If you have any queries or require further submissions, please contact the undersigned at your convenience.

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