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Submission on the Review of the *Animal Welfare Act 1985*

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The NSW Young Lawyers Animal Law Sub-Committee (**Sub-Committee**) makes the following submission on the Review of the *Animal Welfare Act 1985* (**Act**)

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 sub-committees, each dedicated to particular areas of practice. Eligibility 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 Sub-Committee comprises a group interested in laws regulating the treatment of animals. The Sub-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 Sub-Committee members is a passion and desire to use their legal skills and the law to improve protections for animals.

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The Sub-Committee welcomes the opportunity to make a submission on this review, and makes comments on Part 1 (definition of harm), Part 2 (responsibilities of owners and minimum standards of care) and Part 5 (penalties and expiations).

Summary of Recommendations

The Sub-Committee submits that:

1. the *Animal Welfare Act 1985* ("**the Act**") should explicitly encompass psychological well-being within the definition of 'harm';

2. the current obligations of animal owners regarding care responsibilities ought to be more detailed in order to establish a standard below which the requirements would not be considered to be maintained, and include the intention of the person in assessing the relevant standards of reasonableness and necessity;

3. additional elements ought to be included in the current obligations of animal owners regarding care responsibilities, including pain relief, daily food and drink and certain preventative care;

4. omissions and failures to fulfill the obligations of animal owners regarding care responsibilities ought to be included in the definition of “cruelty”; and

5. penalties for corporate perpetrators of animal cruelty offences ought to be increased in order to better serve the objects of the legislation and act as a more effective deterrent to offending.

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The acknowledgement of animal sentience in defining harm

1. The Sub-Committee recommends that the definition of "harm" include distress, pain, and physical and psychological suffering.

2. There is ongoing debate and increasing knowledge about animal sentience, which refers to the ability to subjectively feel and perceive the world around them.[1] 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".[2] As such, the Sub-Committee considers that it is important to explicitly include psychological elements in the definition of "harm" to acknowledge that animal welfare requires a different, additional level of care compared to inanimate objects.[3] Specifically, animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value and their subjective experience.[4]

Responsibilities of owners and minimum standards of care

3. The Sub-Committee recommends including a provision imposing a duty of care on people caring for animals, clearly placing responsibility on animal owners and carers. In Tasmania, for example, "a person who has the care or charge of an animal has a duty to take all reasonable measures to ensure the welfare of the animal".[5] Such an approach ought to, in the Sub-Committee's view, be incorporated into the South Australian regime to clarify the responsibilities of people under the Act.

4. The Sub-Committee recommends defining "adequate" care in relation to an animal as meaning "suitable for the needs of the animal having regard to the species, environment and circumstances of the animal".[6] More specifically, the Sub-Committee notes that the current Act and regulations do not specify the frequency of feeding and watering, what constitutes appropriate living conditions, and the frequency of exercise.[7] To that end, the Sub-Committee supports the addition of a "daily" requirement under the "food and drink" obligation.

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[1] *Animal Welfare Act 1992* (ACT), s 4A; 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.
[2] Ibid.
[3] Agriculture Victoria, *Consultation on a new animal welfare act for Victoria* (Directions Paper, 20 October 2020), p17.
[4] *Animal Welfare Act 1992* (ACT), s 4A.
[5] *Animal Welfare Act 1993* (Tas) s 6.
[6] *Animal Welfare Act 1992* (ACT) s 6B(3).
[7] Department for Environment and Water SA, *2023 Review of the Animal Welfare Act 1985* (Community Consultation Paper) p 9.

5. It is also appropriate to add an obligation to provide appropriate pain relief for an animal, whether they can personally provide pain relief or require veterinary assistance to do so, in certain circumstances – particularly in procedures performed on livestock when, for example, the RSPCA has observed that there is little to no rationale for the continued absence of obligatory pain relief for certain procedures performed on animals.[8] This obligation should exist in addition to any obligation to provide for the treatment of disease or injury.

6. The Sub-Committee respectfully suggests that the proposals in NSW and Victoria to legislate minimum standards of care that reflect the 'Five Domains model be adopted in South Australia. The ACT has already done so.[9]

7. The Sub-Committee considers that a legislation that has animal welfare at its core would fall short of its promised charge were it not to include pain relief requirements regardless of the animal's age. As a minimum, the applicable circumstances ought to include mulesing, castration, and dehorning - inherently painful procedures– but further consideration should be given as to how such a requirement could be expanded to better protect animals from significant, but unnecessary and preventable, pain.

8. In addition to the current obligations of animal owners regarding care responsibilities, unacceptable outcomes should also be established. It is crucial that omissions/failures are also recognised as forms of cruelty, and not just positive acts.[10] The Sub-Committee submits it should also include omissions/failures that fall below such a standard, being that of a reasonable person, which may render an offender liable to prosecution.[11]

9. The call for empathy and justice towards animals is increasing in literature across disciplines.[12] It is therefore important that any legislative reform of animal welfare ensures a minimum standard of care for animals in an effective manner.

[8] Referenced in Phelps, Mark, 'RSPCA says no more excuses over pain relief for livestock' Queensland Country Life' (online, 11 July 2018) <https://www.queenslandcountrylife.com.au/story/5519623/rspca-backs-livestock-pain- relieftechnology/>; and in Meat & Livestock Australia, 'Pain relief production extension' (online, 19 July 2018) <https://www.mla.com.au/news-and-events/industry-news/archived/2018/pain-relief-production-extension/>.

[9] *Animal Welfare Act 1992* (ACT) s 6B(1).

[10] See for example *Animal Welfare Act 1992* (ACT) ss 6B-F; *Animal Welfare Act 1993* (Tas) s 8(1).

[11] The Sub-Committee also made the same recommendation in its Submission to Department of Primary Industries, *Submission on the NSW Animal Welfare Law Reform Discussion Paper* (16 September 2021) 5.

[12] Karina Elizabeth Heikkila, 'Could s 17 of the Animal Care and Protection Act 2001 (Qld) represent a Derridean justice-based approach to animal protections?' (PhD Thesis, Victoria University, 2018) 136.

Penalties and expiations

10. The Sub-Committee submits that the penalty regime under the Act, particularly in cases involving corporate offenders, ought to be more severe. This would help to better serve the animal welfare objects of the Act and better reflect the standards shown in other industry-regulating areas (e.g. environmental and water, where penalties for legislative breaches are many times greater than those imposed under animal welfare legislation).

11. By way of example, numerous offences under the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* carry penalties of well into the hundreds of thousands of dollars, and over $1,000,000.00 in certain cases involving corporate offenders.

12. In comparison, under s 19 (4) of the Act, as a condition of a license, this $50,000 penalty is inadequate as a deterrent or as it may be seen as an acceptable cost of business by profit driven corporations that are using animal research for various purposes. A relatively small deterrent of $50,000 may easily be written off as an expense rather than a penalty that would encourage rethinking of their practices and consider the welfare and protection of animals as an essential component in their production systems.

Concluding Comments

NSW Young Lawyers and the Sub-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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