

Inquiry into the Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019

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The NSW Young Lawyers Animal Law Committee (**the Committee**) makes the following submission in response to the inquiry into the *Prevention of Cruelty to Animals Amendment (Restrictions on Stock Animal Procedures) Bill 2019 (NSW) (the Bill)*.

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.

Summary

The Bill proposes to amend the *Prevention of Cruelty to Animals Act 1979* (NSW) (**POCTA**):

- (a) to prohibit the performance of the mules operation on sheep; and
- (b) to require the administration of pain relief in certain procedures involving stock animals.

The Committee supports the proposed amendments under the Bill, and submits the following:

- (a) A prohibition on the performance of the mules operation on sheep will achieve greater animal welfare outcomes, without significant increases in time and costs for wool producers. The prohibition on the practice of mulesing will also bring the wool production industry in NSW on par with other jurisdictions that have made the change in favour of animal welfare, including New Zealand, which banned the practice in 2018.
- (b) The Committee considers that requiring the administration of pain relief in certain procedures involving stock animals will bring POCTA closer in line with community expectations and attitudes. Consideration ought to be given to strengthening the clarity and effectiveness of section 24 of POCTA with respect to certain defences. This may be achieved by expanding the proposed wording to include language such as “appropriate, safe, and effective form of pain relief” to ensure pain relief measures are fit for purpose and suitably dosed.

Discussion

The Committee agrees with the comments of The Hon Mark Pearson MLC in the Bill’s second reading speech that this is a Bill of its time, and one that brings the Act better in line with its objectives – particularly in the context of avoiding “unnecessary pain”, as contemplated in section 24 of POCTA. As further noted by The Hon Mark Pearson MLC, this Bill relates to cruel procedures performed on stock animals that would normally be in breach of POCTA if performed on domestic animals on the basis that such procedures would be deemed as an act of cruelty upon the subject animal. The Committee submits that the proposed amendments are a necessary step towards aligning the legislation with contemporary understanding of the sentience status of animals, including stock animals.

The Committee makes the following additional comments in support of the Bill’s proposed amendments.

1. Prohibiting the performance of the mules operation on sheep

The Committee agrees with the proposed wording of the Bill in prohibiting the mules operation on sheep. There has been longstanding debate over decades about animal welfare outcomes associated with mulesing as a

means of reducing flystrike in sheep. It is arguably an outdated traditional practice in light of the more effective, sustainable, and humane scientific solutions available, such as breeding naturally resistant sheep.¹ The Committee submits that a prohibition on the mules operation will lead to greater animal welfare practices and outcomes in line with community expectations.

Although the Australian wool industry agreed to phase out the practice of mulesing in 2004,² it is evident that the practice continues in NSW. The Department of Primary Industries and Regional Development in Western Australia has continued to support a phase out of mulesing, and has worked on various research projects to assist farmers and producers with the management of non-mulesed sheep.³ According to their research, the successful management of non-mulesed sheep requires “little extra time or cost” for producers.⁴ Australian Wool Innovation Limited acknowledges that breeding naturally resistant sheep is the “long term, sustainable solution” to reducing the risk of flystrike, and when integrated with other practices (such as short and timely lambing periods) could enable a successful move away from mulesing.⁵

In recognition of the significant animal welfare outcomes, Victoria has this year (early July 2020) become the first jurisdiction in Australia to mandate pain relief for mulesing on lambs, a move supported by the peak industry body Wool Producers Australia.⁶ In Western Australia, the Department of Primary Industries and Regional Development has also recommended that producers who continue to perform the mules operation use a registered pain relief treatment, and that the process is only carried out by an accredited operator.⁷ Introducing pain relief requirements for mulesing is a progressive step for greater animal welfare laws.

However, the Committee submits that the Bill’s proposed prohibition of mulesing is a more effective measure as it will promote greater outcomes for animal welfare without producers facing significant increases in time

¹ See, for example, Jopson, Debra, “‘Tradition’ delays end to mulesing’, *Sydney Morning Herald* (online, 9 April 2010) <https://www.smh.com.au/environment/conservation/tradition-delays-end-to-mulesing-20100408-rv62.html>.

² Government of Western Australia, Department of Primary Industries and Regional Development, ‘Managing non mulesed sheep’ (online, 22 October 2019) <https://www.agric.wa.gov.au/livestock-parasites/managing-non-mulesed-sheep>.

³ *Ibid.*

⁴ *Ibid.*

⁵ Australian Wool Innovation Limited, ‘Breeding for Breech Strike Resistance’ (online, 17 July 2020) <https://www.wool.com/sheep/welfare/breech-flystrike/breeding-for-breech-strike-resistance/>.

⁶ Verley, Angus and Cherie von Hörchner, ‘Mulesing pain relief is now mandatory in Victoria’, *ABC Rural* (online, 1 July 2020) <https://www.abc.net.au/news/rural/2020-07-01/pain-relief-is-now-mandatory-for-mulesing-in-victoria/12405162>.

⁷ Government of Western Australia, Department of Primary Industries and Regional Development, ‘Managing non mulesed sheep’ (online, 22 October 2019) <https://www.agric.wa.gov.au/livestock-parasites/managing-non-mulesed-sheep>.

and costs, as evident in the research conducted by the Department of Primary Industries and Regional Development in Western Australia.⁸

The prohibition will also bring the sheep production industry in NSW on par with other jurisdictions that have made the change in favour of animal welfare, including New Zealand, which banned the practice in 2018.⁹ It would also align with the growing international demand for non-mulesed wool. In Europe for example, non-mulesed wool has been attracting premium prices since 2019 due to retail and consumer demands as it is more ethically produced than mulesed wool.¹⁰ In addition, several retailers have announced a shift to using only non-mulesed wool as a result of the consumer behaviour and economic benefits seen in Europe, including Australian fashion retailers David Jones and Country Road who have either been exclusively using non-mulesed wool or are phasing out mulesed wool over four years as at 2019.¹¹ Accordingly, it is evident that there are economic incentives in addition to the benefits to animal welfare for the NSW wool industry to shift from the traditional mulesing practice to progressive non-mulesing practices.

Finally, the Committee notes that the practice of sheep freeze branding has been highlighted by some as a more ethical alternative to mulesing.¹² However, the Committee shares the view of animal protection bodies such as the Humane Society International Australia, FOUR PAWS, and RSPCA Australia that any form of sheep breech modification should be opposed in favour of breeding naturally resistant sheep.¹³

⁸ Government of Western Australia, Department of Primary Industries and Regional Development, 'Managing non mulesed sheep' (online, 22 October 2019) <https://www.agric.wa.gov.au/livestock-parasites/managing-non-mulesed-sheep>.

⁹ Frost, Kristen, 'New Zealand prohibits the practice of mulesing in sheep', *Farm Online National* (online, 10 September 2018) [https://www.farmonline.com.au/story/5635654/new-zealand-bans-mulesing/#:~:text=The%20New%20Zealand%20Government%20has,\(Care%20and%20Procedures\)%20act.&text=The%20banning%20of%20mulesing%20sheep,effect%20from%20October%201%2C%202018](https://www.farmonline.com.au/story/5635654/new-zealand-bans-mulesing/#:~:text=The%20New%20Zealand%20Government%20has,(Care%20and%20Procedures)%20act.&text=The%20banning%20of%20mulesing%20sheep,effect%20from%20October%201%2C%202018).

¹⁰ Jeffery, Cara and Hugh Hogan, 'Non-mulesed wool commands premium price during market slump', *ABC Rural* (online, 31 August 2019) <https://www.abc.net.au/news/rural/2019-08-31/europe-retail-market-drives-demand-for-non-mulesed-wool/11434626>.

¹¹ Ibid; Locke, Sabrina, 'Mulesing drives Italian wool processors to buy wool from other countries due to animal welfare issues', *ABC Rural* (online, 9 August 2017) <https://www.abc.net.au/news/rural/2017-08-09/italian-buyers-frustrated-by-ongoing-mulesed-wool-problem/8744944>.

¹² See, for example, Lee, Tim, 'Wool growers turn to freezing as retailers go cold in controversial mulesing', *ABC Landline* (online, 1 September 2019) <https://www.abc.net.au/news/2019-09-01/freezing-alternative-to-mulesing-winning-over-wool-growers/11465632>.

¹³ Sim, Terry, 'Welfare bodies oppose sheep freeze branding despite strong uptake', *Sheep Central* (online, 29 November 2019) <https://www.sheepcentral.com/welfare-bodies-oppose-sheep-freeze-branding-despite-strong-uptake/>. See also RSPCA Australia, 'What is steining (or sheep freeze branding) and is it an acceptable alternatives to mulesing sheep?' (online, 17 July 2020) <https://kb.rspca.org.au/knowledge-base/what-is-stein-ing-or-sheep-freeze-branding-and-is-it-an-acceptable-alternative-to-mulesing-sheep/>.

2. Requiring the administration of pain relief in certain procedures involving stock animals

The Committee supports the proposed mandating of pain relief measures for the procedures the subject of s24(1)(a) of POCTA, being procedures that inflict considerable pain and suffering on stock animals.

The issue of pain relief for stock animals has long attracted public and industry attention and this is apparent in the fact that companies have shifted their investment strategies. For example, in 2017, UK based Dechra Pharmaceuticals company invested in Australian company Animal Ethics (the Australian developer of Tri-Solfen, pain relief for stock animals) and bought the rights to sell Tri-Solfen for overseas.¹⁴ However, the Committee submits that although POCTA is NSW's primary animal protection legislation, it has substantially lagged behind such developments, with appropriate pain relief not mandated for branding, dehorning, and other painful procedures. This is notwithstanding:

- (a) The widely accepted scientific concept that animals are sentient beings by virtue of their ability to subjectively feel and perceive the world around them, and by reason of their sentient status, animals have intrinsic value making them deserving of being treated with compassion and having a quality of life;¹⁵
- (b) Quality animal welfare ought to promote and protect the welfare of all animals (including stock animals), and provide proper and humane care, management and treatment of those animals consistent with the recognition of the sentient status of those animals;
- (c) Expert opinion from the RSPCA to the effect that there is little to no rationale for the continued absence of obligatory pain relief for certain procedures performed on animals;¹⁶
- (d) The implementation of pain relief requirements in livestock industries in other countries that are members of the Organisation for Economic Co-operation and Development, including the United Kingdom;¹⁷ and
- (e) The availability of suitable, effective and wholly preferable alternatives.¹⁸

The Committee supports the remedying of some of these shortcomings through the Bill.

¹⁴ Locke, Sarina, 'Pain relief for livestock gets global investment boost with Dechra taking a share of Animal Ethics company', *ABC Rural* (online, 4 April 2017) <https://www.abc.net.au/news/rural/2017-04-04/tri-solfen-animal-pain-relief-company-attracts-uk-investment/8413310>.

¹⁵ *Animal Welfare Act 1992* (ACT) s 4A.

¹⁶ 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-relief-technology/>; 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/>.

¹⁷ *Protection of Animals (Anaesthetics) Act 1954* (UK) s 1, as cited in KS Schwartzkopf-Genswein et al, *Achieving pain control for routine management procedures in North American beef cattle* (2012) 2(3) *Animal Frontiers* 52.

¹⁸ Outlined in relation to a number of the procedures included in s 24(a) of POCTA in the above at footnotes 14, 16 and 17.

Section 24 of POCTA does not impose an obligation on people (seeking to use section 24's defences) to take genuine, tangible measures to avoid "unnecessary pain" to animals. In the Committee's view, the Bill is a practical means of addressing this issue.

It is also evident that the Australian community does not support a person or entity benefitting from the defences and exemptions available under POCTA if this person or entity is unwilling to take meaningful steps to reduce animal pain. This is evident in recent surveys and reports from 2018 indicating that 95% of respondents viewed the welfare of animals on farms with concern, and 91% wanted legislative and policy amendment to address it.¹⁹ The establishment of clearer minimum standards and stronger incentives for greater welfare practices were also strongly supported.²⁰

Accordingly, it is evident that improvements to POCTA (and other relevant NSW legislation) are considered important and desirable by the Australian community. The Committee, therefore, considers that the Bill will assist in bringing POCTA closer in line with the community's expectations and attitudes.

The Committee submits that consideration ought to be given to strengthening the clarity and effectiveness of section 24 of POCTA with respect to certain defences. This may be achieved by expanding the proposed wording to include language such as "appropriate, safe, and effective form of pain relief" to ensure pain relief measures are fit for purpose and suitably dosed. The Regulations may then provide non-exhaustive lists of pain relief measures for certain procedures, as applicable, to assist those administering the procedures to better understand their obligations.

¹⁹ Futureye, *Australia's Shifting Mindset on Farm Animal Welfare* (2018)
<https://www.outbreak.gov.au/sites/default/files/documents/farm-animal-welfare.pdf>.

²⁰ *Ibid.*

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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