

**REVIEW OF THE  
TASMANIAN  
ANIMAL WELFARE ACT (1993)**

*Submission by*

**Against Animal Cruelty Tasmania Inc.  
(AACT)**

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## **Table of Contents**

<b>Background</b>	<b>3</b>
<b>Summary of Main Recommendations</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
Concerns regarding the process of the review and the Issues Paper in general.	<b>4</b>
<b>Response to Issues Paper</b>	<b>5</b>
Duty of Care	<b>5</b>
Method of Management	<b>6</b>
Powers of Officers	<b>7</b>
Limitations	<b>7</b>
Exemptions	<b>8</b>
Control of prescribed animals using a prescribed substance	<b>9</b>
Definition of “animal research”	<b>9</b>
Animal welfare standards	<b>10</b>
Powers of Officers and provision for infringement notices	<b>13</b>
Tightening of restrictions on leghold traps	<b>13</b>
Banning glueboard traps	<b>14</b>
Providing a power in the Regulations to authorize matters.	<b>14</b>
Evidentiary matters	<b>15</b>
Animal Welfare Regulations 1993	<b>15</b>
<b>Matters not Raised in Issues Paper</b>	<b>16</b>
Definition of ‘animal’	<b>16</b>
Appointment of officers and inspectors	<b>16</b>
Animal Welfare specialists within the police force	<b>17</b>
Power to undertake routine and spot inspections	<b>17</b>
Breaches of the Act	<b>18</b>
Identification marks or devices	<b>18</b>
Power to kill animals	<b>18</b>
Meeting and composition of Animal Welfare Advisory Committee	<b>18</b>
Disbursements of proceeds of Sale	<b>18</b>
Rodeos and circuses	<b>19</b>

Compulsory reporting of offences	19
Slaughtering of animals	20
Removal of Act from Primary Industries Portfolio	20
Resourcing of Animal Health and Welfare Branch	21
Penalties: Increasing the current penalties and setting of minimum penalties for breaches of the Act.	21
Companion Animals	21
Persons initiating prosecution to be indemnified	22
<b>Animal ethics committee (AEC)</b>	<b>22</b>
<b>Conclusions</b>	<b>23</b>
<b>References</b>	<b>23</b>
<b>Appendix 1: AACT Comments on Specific ‘Standards’</b>	<b>24</b>
<b>Appendix 2 Animals Australia Review of the Model Codes of Practice for the Welfare of Animals.</b>	<b>27</b>

## **1. Background**

Against Animal Cruelty Tasmania Inc. (AACT) is a not-for-profit Tasmanian animal advocacy group formed in 2003. AACT's overall aim is to eliminate all exploitation, cruelty and suffering of animals within our state and beyond. We strive to facilitate change through non-violent action, education and political lobbying on a wide variety of issues.

While the organisation itself is in its youth, AACT is able to draw on the combined experience of its members, a number of whom boast many years of active involvement in animal rights and animal welfare groups in Australia and New Zealand. AACT is a member group of Animals Australia and AACT coordinator, Yvette Watt is a member of the Animals Australia executive.

## **2. Summary of Main Recommendations**

1. The strengthening of the duty of care statement to fully encompass bodies corporate
2. The Method of Management clause must be revised to allow for the inclusion of groups of animals such as herds, flocks etc and an increase in penalties for breaches of this section
3. The Act must be amended to allow for the issuing of infringement notices with financial penalties attached.
4. The Act must expressly provide for a Statute of Limitations of 5 years
5. There must be no exemptions or adoption of standards that weaken or allow for non-application of the Act
6. The sale, supply and possession of leghold traps must be banned under the Act.
7. A ban on the use of glue traps must be provided for under the Act.
8. The definition of an animal under the Act must be broadened to include crustaceans and cephalopods
9. Allowance for routine and on the spot inspections without need for prior notice, and without need to show reasonable belief that a breach of the act is being committed.
10. There must be mandatory, accredited training programs for officers and inspectors.
11. There must be specialist police officers who are fully conversant with the Act.
12. There must be a change in policy in appointment of officers and inspectors so that appointments are also made outside the RSPCA
13. There must be the addition to the Act of clauses covering the use of animals in rodeos and circuses.
14. The Act must provide for compulsory reporting of cruelty.
15. The Animal Welfare Advisory Committee must meet at least quarterly and at least half of the members must be animal welfare representatives.
16. There must be an increase in penalties with the inclusion of gaol sentences for serious offences and a provision for minimum penalties for breaches of the Act.
17. There must be provision within Act for the *humane* destruction of animals by officers/inspectors.
18. The Act must be removed from the Primary Industries Portfolio.
19. There must be clear laws on how humane slaughter of animals.

### **3. Introduction**

AACT welcomes the release of the review of the Animal Welfare Act (1993) and the opportunity to comment on it. AACT would have appreciated the opportunity of participating in the Working Group and the development of the Discussion Paper, and now offers its considered views in relation to the Review. AACT notes that the current Animal Welfare Act is 12 years old, and concurs that there are a number of anomalies contained in the Act that would meet neither community expectations nor those of animal advocates.

While the Issues Paper raises a number of important points which will be discussed in this submission, there are also a number of other matters, not referred to in the Issues Paper which we will raise and discuss in detail in this submission.

#### **3.1 Concerns regarding the process of the review and the Issues Paper in general.**

AACT would like to express concern regarding the process for the review of the Act, specifically to do with the period of time allowed for submissions and the process by which the Issues Paper was drawn up. Whilst we appreciate the two week extension in the period for comment that has been granted, AACT believes that the initial period of 28 days given for submissions to be lodged in response to the discussion paper was far too short considering the complexity of the legislation, especially when taking into account the various regulations and standards that need to be properly researched and understood in order to make a properly informed submission.

Additionally, AACT is extremely concerned that the Animal Welfare Advisory Committee (AWAC) had such minimal involvement in the preparation of the Issue Paper. As we understand it, the AWAC has met only once this year, early in year, and has not been asked for its input into the drawing up of the Issues Paper. Considering that the initial announcement that a review of the Act was to take place was made in January, AACT believes that there is no excuse for such a short period for submissions, not for the non-involvement of the AWAC. We request a response from the Minister explaining why the submission period is so short, and why the AWAC has met only once per year for the last two years and was not involved in drawing up the Issues Paper.

Further, AACT is concerned that the introduction in the issues paper discussed at some length issues related to health and safety in foods and benefits to the consumer, but neglects to mention in even minimal detail the benefits to the animals themselves of animal welfare improvements. It is AACT's view that the National Animal Welfare Strategy (at this time) is similarly reticent, focusing more on those who use animals for commercial or related purposes rather than on the animals themselves.

AACT would point out that this Act, in common with others of its type, is compromised by the fact that animals, in a legal sense, have the status of property, rather than being recognized as sentient beings with their own self interest. It is further compromised by the numerous exemptions which effectively discriminate between various species in terms of the level of protection offered,

## 4. Response to Issues Paper

### 4.1 Duty of Care

It is clearly of great importance that the Act has a clear Duty of Care definition and statement, but as pointed out, this statement must precisely define *who* has the duty of care in order for successful application of the Act in the courts.

With modern farming has become increasingly industrialised, with a large increase in the number of factory-farms and a marginalisation of smaller, family-based farming practices. These changes have seen a ‘corporatisation’ of the farming industry and with such change has come increasingly diffuse corporate structures.

It is paramount that any, and all, organisations who breach the provisions of the *Animal Welfare Act 1993* (Tas) are properly identified, charged and convicted. The recent example of the farmer who was acquitted because he did not have care or charge of the animals within the meaning of section 6 of the *Animal Welfare Act 1993* (Tas) is cause for concern.

AACT agrees with the working group’s position that the Duty of Care statement in the Tasmanian Act must be strengthened. It is essential that the duty of care owed is expressly provided for to ensure that the courts can prosecute for non-compliance. Section 17 of the *Animal Care and Protection Act 2001* (Qld) for example illustrates the duty of care expected:

- (3)...a person breaches the duty only if the person does not take reasonable steps to—
  - (a) provide the animal’s needs for the following in a way that is appropriate—
    - (i) food and water;
    - (ii) accommodation or living conditions for the animal;
    - (iii) to display normal patterns of behavior;
    - (iv) the treatment of disease or injury; or
  - (b) ensure any handling of the animal by the person, or caused by the person, is appropriate.
- (4) In deciding what is appropriate, regard must be had to—
  - (a) the species, environment and circumstances of the animal; and
  - (b) the steps a reasonable person in the circumstances of the person would reasonably be expected to have taken.

As well as understanding what the duty of care is, it is also important that the person/persons who owe the duty of care are clearly recognized. For example, section 12 of the *Animal Care and Protection Act 2001* (Qld) provides:

- (1) A person is a ***person in charge*** of an animal if the person—
  - owns or has a lease, license or other proprietary interest in the animal; or
  - has the custody of the animal; or

is employing or has engaged someone else who has the custody of the animal and the custody is within the scope of the employment or engagement.

(2) Despite subsection (1)(a), a person who holds a mortgage or other security interest in an animal only becomes a person in charge of the animal if the person takes a step to enforce the mortgage or other security.

AACT believes that sections 12 and 17 of the *Animal Care and Protection Act 2001* (Qld) provide excellent examples of the type of amendment that would strengthen the duty of care provisions in the *Animal Welfare Act 1993* (Tas).

AACT also believes that the term ‘person’, if the Queensland provisions are adopted should be defined broadly to also include ‘organisations’. In a recently published Issues Paper, the Tasmanian Law Reform Institute used the term ‘organisation’ rather than corporations or bodies corporate. The reason for this adjustment, was the Institute’s belief that a range of bodies including corporations, partnerships, associations, joint ventures and government entities should all be capable of incurring liability.<sup>1</sup>

**Q: Are the duty of care provisions sufficient for the purposes of the Act?** No, we believe that these provisions need to be clarified and strengthened.

**Q: Should the Act be amended to extend the duty of care?** Yes, we believe that the Act must be amended to extend the duty of care to organizations.

**Q: Is the inclusion of deeming provisions an effective means of ensuring clarification of the duty of care?** Yes. AACT considers that deeming provisions should be an adequate means of clarifying duty of care.

**Q: Is there a need to amend the Act to include provisions to state that corporate bodies and the management of those organisations are deemed responsible for the management of animals?** Yes, AACT believe that such amendments are essential for the proper protection of animals, especially farm animals, under the Act.

#### **4.2 Method of Management**

Current intensive farming practices deal largely with groups, herds, flocks and similar terminology. The Act therefore should reflect the interests of individual animals as well as the group/herd/flock generally. However the current wording of the Act in Part 2, Section 7, refers throughout to ‘an animal’, requiring that any prosecution be based on an offence against an identifiable individual animal (or animals) rather than a group of animals. This is clearly problematic in light of current farming practices. AACT suggests that this section of the Act must be revised to allow for prosecutions for cruelty to groups of animals. For example, where the term ‘an animal’ is used in this section, it could be replaced by ‘animals’. Alternatively a clarifying clause as part of the introduction to this section could be added.

AACT agrees with the Working Group that the current penalties under this section of the Act are manifestly inadequate and at a minimum must be at least equivalent to those in Section 8.

<sup>1</sup> See Tasmanian Law Reform Institute, ‘Corporate Manslaughter’ Issues Paper. As found at <http://www.law.utas.edu.au/reform/> (Accessed 18<sup>th</sup> September 2005).

Further, where an offence has been found to have been committed against a group of animals the penalty must be greater to reflect the numbers of animals that have suffered.

**Q: Are the current provisions of section 7 sufficient to meet the objectives of the Act?** No, AACT believes the wording of this section must be amended to allow for prosecutions of cruelty to groups of animals as well as to individual animals.

**Q: Should the penalties of section 7 be brought into line with those applying at section 8?** Yes. AACT believe that the penalties for section 7 must be at least equivalent to those in section 8.

#### **4.3 Powers of Officers**

As noted in the Issues Paper, there is no requirement under the current Act for a person to be made to furnish an investigator with information, other than a name and address, which would be relevant to the investigation. This is clearly problematic and AACT agrees with the Working Group the Act must be amended to allow for investigating officers to demand information relevant to the investigation.

AACT also supports the view of the Working Group that the power to arrest without warrant, which is currently provided in the Act for a Police Officer, should be extended to officers other than Police under the Act.

**Q: Would similar provisions as provided in the Meat Hygiene Act 1985, the Living Marine Resources Management Act 1995 and the Animal Health Act 1995 strengthen the ability to administer the Act to achieve its objectives?** Yes. AACT supports the inclusion of provisions which would allow for officers to demand the furnishing information and documents relevant to the investigation. AACT also supports the extension of powers to arrest without warrant to officers other than Police Officers under the Act.

#### **4.4 Limitations**

The *Justices Act 1959* (Tas) provides that unless ‘some other time is limited for making complaint... the complaint must be made within 6 months’.<sup>2</sup> AACT agrees with the Working Group that that a six-month limitation period is a sufficient timeframe in which to investigate breaches of the *Animal Welfare Act 1993*, particularly those breaches that involve large organisations. It is submitted that a more appropriate timeframe would be a minimum of two years but preferably 5 years. An amendment such as this would bring Tasmania’s *Animal Welfare Act 1993* (Tas) into line with other Acts such as the *Animal Welfare Act 2002* (WA) in which proceedings may not be commenced more than two years after the offence was committed.<sup>3</sup> The extension of time is beneficial to all parties concerned, as it allows complaints to be thoroughly investigated prior to hearing, ensuring that only sufficiently blameworthy matters are brought to court.

AACT also supports the Working Group’s suggestion that certain offences, such as aggravated cruelty should be made indictable offences and linked to the criminal code, thus removing the limitations from such offences. AACT believes that such a move would be in line with current community expectations. There is a growing abhorrence in the community for cruelty to animals, demonstrated by community outrage at a number of recent, high profile cases of aggravated

<sup>2</sup> Section 26(1)(a) of the *Justices Act 1959* (Tas).

<sup>3</sup> Section 82(2) of the *Animal Welfare Act 2002* (WA).

cruelty against animals, where the community has shown great concern for what appears to be a minor punishment considering the serious the nature of the crime committed.

**Q: Is the current six month period limitation on taking action for alleged offences under the Act limiting the effectiveness of the Act?** Yes. AACT believes that the period of limitations must be increased to at least 5 years, but a minimum of two years.

**Q: What are the views of interested parties on the options presented?** AACT prefers the model whereby the two elements are combined, so that there would be a general 2 to 5 year period covering all offences, with certain offences being made indictable offences and linked to the criminal code.

**Q: Are there any other options that could be considered to address this issue?** AACT believes the above model is satisfactory. Given the nature and complexity of the matters being dealt with, AACT believes that 5 years is an appropriate limit for presentation of evidence. However, Infringement Notices, discussed later in this paper could be an option for relatively minor infractions only.

#### **4.5 Exemptions**

AACT agrees with the criticism noted in the issues paper that exemption provisions somewhat negate the effect of and compromise the effectiveness of animal welfare legislation, and as such considers that exemptions to the Act simply because the practices are deemed to be 'usual' is insufficient grounds for a legal defence of non-compliance. There can be no legitimate reason for the non-protection of those species that are the subject of hunting and fishing. Implicit in Section 4 is an admission that these practices DO cause suffering, and as such, these animals must be afforded the full protection of the Act. The reality is that many "normal" hunting and fishing practices are cruel and are also largely unregulated and unmonitored. Whilst the Act is designed to cover fish, it is clear that the exemptions provided mean that in reality fish are exempt from most potential cruelty charges.

Put simply, AACT considers that the legislation must protect ALL animals from cruelty, with equal commitment regardless of their species or the use to which they are being put by humans. This includes fish, and, as noted fish are currently considered animals under this Act. AACT argues that Crustaceans and Cephalopods should also be included where they are shown to be capable of suffering pain. (See further discussion under point 5.1 in this submission).

As such AACT strongly recommends that this Section 4 should be removed from the Act. The issue of exemptions and defences to the Act is covered in more detail later in this submission under point 4.8 on 'Standards'.

#### **4.6 Control of prescribed animals using a prescribed substance**

As discussed above (point 4.5: Exemptions) AACT does not believe that any animals should be exempt from the Act. Currently, once an animal is deemed to be a 'pest' all consideration of its ability to suffer is ignored. The current list of prescribed substances includes many that cause terrible and protracted suffering to the animals it is used on. Additionally, many of the methods of control using such poisons is indiscriminate and ineffective in the long term. AACT does not support the control of any 'pest' animals unless it can be demonstrated conclusively that the methods used are humane.

While the Working Party suggests that there is good cause to give powers to the Minister to make and approve a register of substances that can be used to control animals, AACT is very concerned that this power would be more often used to add a substance than to remove one. As such, we do not support the Working Group's opinion in this case.

The nature of, and the use of poisonous substances that cause such protracted and painful deaths to animals is a very serious matter, and one which requires the most stringent approval mechanisms. The Act must be compromised by making the addition of more substances (or the extension of the use of those already registered) more simple.

Additionally, even in Emergency Animal Disease situations, the Act must not be weakened to allow the Chief Veterinary Officer to exercise powers to approve the use of non-registered substances that may cause suffering to the animals they are used on.

**Q: Should section 6(2)(h)(v) be amended as proposed or are there important reasons as to why these matters should be retained within the Regulations?** AACT does not believe that exemptions should be made for 'pest' animals in the Act, and that any control of 'pest' animals must be done humanely. However, while our preference is that no substances should be approved for use unless they are proved to be humane, AACT believes that the current regularity process is a better safeguard against the non-essential addition of poisons and other substances for use against 'pest' animals than the model proposed.

**Q: What are the views of interested parties on the proposal to provide the CVO with the power to use non-registered or non-regulated noxious or toxic substances in emergency animal disease situations?** Again, AACT considers that such a move would weaken the Act and would allow for the potential use of substances that cause terrible suffering to the animals they are used on. There must be an emphasis on humane solutions to such problems.

#### **4.7 Definition of "animal research"**

AACT agrees that the amendment of the definition of animal research to read "any procedure , test, experiment, inquiry or study to gain new or validate existing scientific knowledge, in the course of which..." would reasonably clarify the sorts of practices this section intends the Act to cover, without weakening the Act. However, AACT is extremely concerned that any experiments/research may be carried out upon any animal to "validate existing knowledge", a allowing for repetition of research using animals. It has recently been reported that there was a large increase in the number of animals used in research and experimentation in the last year, which AACT finds disturbing, and believes that the wider community shares its concerns.

More important, however, than the definition of Animal Research is the fact that the current Act does not cover persons or organisations that breed animals for the purposes of animal research. AACT agrees with the Working Group that the Act must be amended to include such activities. Such regulations must include a provision that any person or organisation breeding animals for research purposes must be licensed by the state, and the license must set down various requirements for the care of the animals and reporting of statistics to the state on numbers bred, distributions, and deaths. Additionally any animals procured for research purposes must be procured from persons or organisations with such a licence, unless, because of the nature of the research, (and with the agreement of an ethics committee) the animals must be procured from the wild.

**Q: Does the definition of animal research require amendment?** Yes. AACT would agree with the suggested definition in the Issues Paper.

**Q: Would the suggested amendment provide greater clarification as to what is intended to be meant by animal research?** Yes.

**Q: Should the breeders of animals for research be regulated under the Act?** Yes. Such breeders must also be licenced by the state and anyone procuring animals for research must procure them from licenced breeders (unless the animals must, because of the nature of the research, be procured from the wild).

**Q: What potential impacts are there on organisations or individuals if they are required to be regulated under the Act?** In the short term regulation may require more work for the person on organisations breeding animals for research purposes, however, this needs to be seen as a matter of course for such activities and is in keeping with legislation in this area in other states. Breeders must be held accountable to the community for their activities.

#### **4.8 Animal welfare standards**

This is a particularly complex area, and one that requires very careful consideration.

It is clear that in the courts, the ‘Standards’, while not legally enforceable, can nonetheless be used as a defence to a cruelty charge in that they may be seen to describe what is ‘normal’ or ‘usual’ practices. However, what is also clear is that these Standards also allow for practices that would otherwise be considered to be breaches of the Act. AACT believes that the Standards (or Codes of Practice) also lead the consumer to believe that animal welfare is properly accounted for when this is by no means the case.

AACT cannot in all conscience recommend the adoption of current standards as enforceable legislative instruments. The ONLY circumstances under which such adoption should occur is *IF*, and only if, the practices prescribed in the standards are in keeping with the spirit of the Act, and, in the case of farm animals the “five freedoms” (later described in this section, and do not allow for practices that might otherwise be seen as a breach of the Act. As such, we are concerned that provisions for “domestic fowls” are currently included in the Regulations, and thus legally enforceable. These regulations allow for the keeping of egg laying hens in battery cages under conditions which by their nature seriously compromise the birds’ welfare and would thus, otherwise, contravene the Act..

AACT concurs with Animals Australia’s estimation of the animal welfare benefits of “Standards” (here referred to as “Codes of Practice”) as follows:

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“The information provided in the ‘Final Report’ by Neumann, and thus the outcomes of this review, only strengthens our considered view that the Model Codes of Practice (and State/Territory equivalents) do not provide an animal welfare benefit and in fact, authorize and sanction cruelty to animals.

“Further, the inevitable conclusion, based on all available facts, is that Codes of Practice exist primarily to permit practices to agricultural animals that would normally be considered prosecutable breaches of the general provisions of animal protection legislation in each state of Australia.

(See also Appendix 2: Animals Australia Review of the Model Codes of Practice for the Welfare of Animals. Final Report' by Geoff Neumann and Associates – February 2005).

As a guide for what is acceptable in terms of provisions for animal welfare within the Standards for animal in agricultural use, AACT recommends that the “Five Freedoms” \, which are a set of principles that provide a logical and comprehensive framework for analysis of welfare within any animal production system. must be followed.<sup>4</sup>

The “Five Freedoms” state that a responsible person or organization should ensure that the animal has:

1. Freedom from thirst, hunger and malnutrition – *by ready access to fresh water and a diet adequate to maintain full health;*
2. Freedom from discomfort - *by being provided with a suitable environment including appropriate comfort and shelter;*
3. Freedom from pain, injury and disease – *by prevention or rapid diagnosis and treatment;*
4. Freedom from fear and distress – *by ensuring conditions which avoid mental suffering;* and
5. Freedom to express normal patterns of behaviour. *–by providing sufficient space, proper facilities and company of the animal’s own kind.*

It is AACT’s view that the various Animal Welfare Standards for farm animals fundamentally contravene these five basic freedoms, and significantly compromise the welfare of all farm animals in one way or another in all of the standards.

AACT’s view is that the Standards, while approved by the Minister under the Animal Welfare Act, provide for clear breaches of the cruelty provisions of the Act (Part 1 and (c) which states that “A person must not do any act, or omit to do any duty which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal”, and (c) “drives, conveys, carries or packs an animal in a manner or in a position or in circumstances that subjects it or subject it to unreasonable and unjustifiable pain or suffering...”

In addition to problems we have identified in our abbreviated review of the Standards which cover farm animals, AACT is concerned that potential further exemptions in the Act would be provided by the adoption of any of the current Standards, or any proposed additional ones into regulation, especially in regard to hunting. It is AACT’s opinion that hunting causes significant suffering to the animals. There is ample evidence that the hunted animals are often not killed quickly or humanly and instead suffer protracted and painful deaths. Additionally such activities ate carried out and with little or no monitoring or supervision.

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<sup>4</sup> The “Five Freedoms” are criteria proposed by the British Farm Animal Welfare Council (FAWC) as a useful means of assessing animal welfare, and are accepted as such in many countries. The “Five Freedoms” evolved from minimum standards for animal welfare suggested by the Brambell Committee in 1965 which acknowledged that animal welfare standards must encompass both the mental and the physical well being of an animal. The Brambell Committee proposed that all farm animals should have the freedom to “stand up, lie down, turn around, groom themselves and stretch their limbs”. This modest, basic “freedom” is currently denied to many intensively farmed animals in Tasmania such as “battery hens” and pigs. The FAWC criteria were revised in 1993 to encompass more than just the spatial requirements of an animal and led to the development of the “Five Freedoms”

AACT is interested to note that the Act, even in its current form, prohibits the use of an animal to “*Fight, bait, worry, kill or injure another animal*”, yet the use of hunting dogs in hunting activities including flushing out wallabies is common practice in the state, and indeed, is provided for in the Standard for the Shooting of Wallabies.

With regards duck shooting, a number of Australian states, the most recent being Queensland, have now banned duck shooting, and we would urge the Tasmanian State Government to implement the same bans. The Queensland government stated that “(duck shooting) has no place in contemporary society in (the) smart state”, and although there is a vocal minority who support this activity, in Tasmania, it is AACT’s view that the wider community deplors such cruel and unnecessary carnage.

Although a review of the Standards does not form part of the Review of the Animal Welfare Act, nor have we reviewed all of the Standards, or any at a comprehensive level, AACT requests nevertheless that its statements in relation to some of the Standards at least be placed on record. These statements are contained in Appendix 1 of this document.

**Q: Do the current provisions for the adoption of standards and their application through Regulations serve the objectives of the Act?** No. The standards do not provide an animal welfare benefit and in fact, authorize and sanction cruelty to animals.

**Q: Would the suggested amendment provide greater clarification as to the legal status of codes if adopted?** Yes, however while there may be greater clarification to the legal status of the codes, this would be to the detriment of the welfare of the animals which the Act is supposed to protect from cruelty, as it would weaken the Act.

**Q: Should adopted codes incorporate different provisions that delineate between mandatory standards and recommended voluntary provisions?** No. Adherence to the animal welfare act must be mandatory and standards must not be incorporated if they weaken the Act.

**Q: Should the Act be amended to provide that compliance with a standard is a defence against charges involving that particular standard?** Not if the Standards contravene the spirit of the Act and allow for compromises in animal welfare.

#### **4.9 Powers of Officers and provision for infringement notices**

It is unacceptable that the *Animal Welfare Act 1993* (Tas) provides no recourse for officers and inspectors to issue infringement notice, with appropriate financial penalties attached. The creation of infringement notices within the *Animal Welfare Act 1993* (Tas) would reduce the court time required as well as ensuring compliance with animal welfare legislation in other jurisdictions.<sup>5</sup> AACT believes that the issuing of infringement notices by inspectors/officers should be similar to those provided for in the *Workplace Health and Safety Act 1995* (Tas). Under this Act, inspectors are able to require the appropriate person ‘to take any steps that the inspector thinks fit and are specified in the notice to remedy or alleviate those circumstances’.<sup>6</sup> And, if the circumstances are sufficiently urgent ‘the inspector may give an oral direction’.<sup>7</sup> AACT also submits that officers when issuing infringement notices must be given the power to give oral and/or written directions outlining what must be done to comply with the Act, and should the directions not be followed then there must be penalties for non-compliance and refusal to follow an officer’s directions. (As in section 14 of the Act).

However, it must be stated that infringement notices must only be issues for relatively minor offences, with more serious offences dealt with through the courts.

**Q: Should inspectors under the Animal Welfare Act 1993 be provided with the power to issue infringement notices?** Yes. AACT believes that for more minor offences under the Act, the ability to issue infringement notices and directions is essential in order that the Act is properly enforced.

**Q: Would the inclusion of this power contribute to the achievement of the objectives of the Act?** Yes. However, the issuing of infringement notices must not replace court action for more serious breaches of the Act.

#### **4.10 Tightening of restrictions on leghold traps**

AACT is very pleased that the current Act bans the use of leghold traps, which cause terrible and prolonged suffering to animals caught by them. Leghold traps are mostly set and left unattended, with the animals caught allowed to suffer for extended periods of time before the traps are checked and the animal destroyed. However, clearly the legal sale and possession of leghold traps is an anomaly that makes the restrictions on their use harder to police, and does in fact encourage the continued illegal use of leghold traps.

As such, AACT believes that the sale and possession of leghold traps must be banned. The only proviso AACT would accept on this matter is, that a person who sells or possesses a leghold trap may only do so if the trap has been rendered permanently unusable.

AACT was concerned that a recent motion to Parliament calling for a ban on the sale and possession leghold traps did not succeed. It is difficult to understand why such a motion would not succeed. However, whilst the Bill was not passed, it is clear that there was good support for its intention.

<sup>5</sup> Both the *Prevention of Cruelty to Animals Act 1986* (Vic) and the *Animal Welfare Act 2002* (WA) currently provide for the issuing of infringement notices.

<sup>6</sup> Section 38(1)(b) of the *Workplace Health and Safety Act 1995* (Tas).

<sup>7</sup> Section 38(2) of the *Workplace Health and Safety Act 1995* (Tas).

**Q: Should the sale and possession of leg hold traps be restricted or banned?** Yes. These traps cause terrible suffering and their use is in clear legal and ethical contravention of Act.

**Q: Is the legislation satisfactory as it stands?** No. It is quite absurd to ban the use of these traps but not ban their possession and trade. The Act must be amended to ban the use and trade in leghold traps, unless they have been rendered permanently unusable. The Act must be amended to provide for a total prohibition.

#### **4.11 Banning glueboard traps**

AACT actively supports a ban on glueboard traps for very similar reasons as outlined above in the discussion on leghold traps – i.e. the traps are left unattended for extended periods and the animals caught in such traps are often left to die slowly. Additionally, as noted in the issues paper, the animals caught in such traps are difficult to remove and it is thus difficult to destroy them humanely.

**Q: Should use of glue board rodent traps be banned?** Yes.

**Q: Is the legislation satisfactory as it stands?** No. Whilst the use of glueboard traps may contravene the Act an outright ban is clearly the only satisfactory option.

#### **4.12 Providing a power in the Regulations to authorize matters.**

AACT finds this section lacking in the necessary details required for informed comment. AACT brings attention to the following clause from the *Animal Welfare Act 2002 (WA)* which we have amended where we believe it to be appropriate, with the assumption that this is an example of what the Working Group is suggesting for the Tasmanian Act:

"The Secretary of the Department of Local Government shall have the authority to appoint General and Scientific Inspectors. These may be (but are not limited to) officers nominated by the RSPCA, Officers from the Department of Parks and Wildlife (or equivalent), appropriately trained Officers of the Tasmania Police Force, and any other individual/s or groups whom the Secretary believes have a demonstrable commitment to furthering the welfare of animals and are competent to operate as Inspectors under the Act, who may be nominated by an animal welfare organization ... or anyone whom the Secretary considers it appropriate to appoint...."

AACT would have felt more comfortable in commenting on this matter had a clearer example been offered for consideration. Should there be a change to regulations in line with the recommendation of the Working Group we would assume that the full details of the changes would require that a regulatory impact statement be made and we would make our submission on this matter at that time"

**Q: Would the inclusion of a power to authorise matters improve the effectiveness of the Act?** No comment – see discussion above.

#### **4.13 Evidentiary matters**

AACT agrees with the working group that the Act should be amended to allow for the admission of evidence without the direct evidence of the author, so that written evidence, in the absence of the authors presence is still considered admissible. AACT agrees that a similar provision to that quoted in the Issues Paper (from the Victorian Act) would be an appropriate.

However, the alternative suggested whereby any person employed by the RSPCA as an Animal Welfare Officer is deemed to be an officer under section 13 is not sufficient to properly address the issue of Evidentiary Matters as outlined in the Issues Paper. This is because it should not be assumed that all officers appointed under the Act must also represent or be employees/ appointed to/by RSPCA. There is clear provision within the Act that other persons not associated with the RSPCA may be appointed as officers under the Act.

**Q: Should the issues outlined at 5.13 be adopted as recommendations to go to the Government for consideration as to possible amendments to the Animal Welfare Act 1993?**

Yes, however AACT does **not** agree with the alternative, whereby only a person who represents, or is employed by, the RSPCA as an Animal Welfare Officer is deemed to be an Officer under the Act. There is a viable alternative to the suggested clause contained in the Victorian POCTAA.

**4.14 Animal Welfare Regulations 1993**

AACT believes that remaking the regulations is a vital part of the review of the AACT and, as discussed, there are a number of regulatory matters in this submission that we would urge the Government to consider including.

There is also the matter of the regulation covering the care and housing of egg laying hens, which in its current form sanctions cruelty to these birds by allowing for them to be housed in the intensive “battery” system. There is clear evidence that hens suffer in the intensive “battery” cage system, where their physical, psychological and behavioural needs are either seriously compromised or denied to them (see point 5.8 regarding the “Five Freedoms” and standards for further discussion on the importance of meeting animals physical, psychological and behavioural needs within codes and regulations). There is also ample evidence by way of petitions and surveys to demonstrate that majority of consumers are also opposed to this system of animal husbandry.

As such AACT recommends that the current regulation regarding the care and housing of egg laying hens must either be rewritten to properly encompass the needs of the hens in line with the five freedoms (as such necessarily requiring a ban on the battery cage systems), or be removed from the regulations in line with our recommendations on other standards applying to the care and housing of farm animal in point 5.8.

Furthermore, in line with our comments in 5.8, we recommend that the standards NOT be written into regulation for the reasons stated.

With regard to the amendment of *Regulation 4 – Control of prescribed animals and Schedule 1 – Control of prescribed animals with prescribed substances*, AACT has made its position clear on this matter in this submission, and as such AACT believes that the only amendment to these regulations that should be made is to remove the regulations completely, as they currently permit for exemptions from the Act, thus allowing certain animals to suffer appalling cruelty.

We would, however, be pleased to see the regulations amended to allow for the issuing of infringement notices with financial penalties.

## **5 Matters not Raised in Issues Paper**

### **5.1 Definition of ‘animal’**

Crustacea and some invertebrates (such as octopus and squid) must also be included where they are shown to be capable of suffering. There is substantial scientific evidence to show that crabs, lobsters, octopus and squid have elaborate nervous systems and are clearly able to feel pain. As such there is clear reason to provide for their welfare under this Act.

### **5.2 Appointment of officers and inspectors**

AACT is very concerned at the inadequacy of the ‘policing’ of the *Animal Welfare Act 1993* (Tas). At present, as AACT understands it, officers and inspectors need not have had any specialist training in the area of animal welfare. It would appear that the appointment of officers of made based solely on the fact that they are RSCPA employed inspectors and AACT find this unacceptable. This is inadequate. As a matter of urgency we request that specialist, accredited training programs be set up and that successfully completing such a course must be mandated of all inspectors/officers.

Additionally AACT strongly believes that the Minister must look more widely than the RSPCA for the appointment of officers and inspectors. AACT believes that for the proper enforcement of the Act it is important that officers/inspectors who are independent of the RSPCA are also appointed. This becomes particularly important in light of RSPCA accredited programs covering such things as eggs and pork products, whereby the RSPCA receives a proportion of the sale of these products. This appears to be a conflict of interest, whereby the RSPCA while profiting from the sale of these animal products, is also the Government appointed inspectorate. AACT believes that positions for officers and inspectors should be advertised and open to anyone to apply, with the appointment based on the applicant’s abilities and experience and demonstrated commitment to animal welfare rather than simply their association with the RSPCA.

As AACT understands it, there is currently no other legislation administered or enforced by a Non Government Organisation. While this deregulatory approach has become the norm with animal welfare it is hard to think of any other situations where such an approach would be considered acceptable in other areas of government responsibility. A similar model to that used locally was in place in South Africa but it has been deemed to have failed and alternatives are being put into practice. AACT understands that the South African government is currently looking at reforms providing for, and looking to, individuals from animal protection organizations” for enforcement.

### **5.3 Animal Welfare specialists within the police force**

Further to the discussion above on appointment of officers and inspectors, AACT submits that there should be provision made in the Act for a number of specially trained police officers who are properly conversant with the Act. This would be particularly beneficial in areas where there are not other Animal Welfare officers located in the region, but would also be of general benefit and would reduce the workload of the general animal welfare inspectorate and would provide a point of additional contact for members of the public on animal welfare matters and/or cruelty complaints.

AACT is aware of a number of cases around Australia where cruelty complaints were laid, and where despite expert legal advice that the cases were worthy of prosecution, the RSPCA, as the main entity given power to prosecute under the Act, was unwilling to progress them. When these

cases were taken to the Police, they were also unwilling to act due to a lack of experience in the area of animal welfare, a lack of knowledge of the Animal Welfare Act, and a perception that such matters were “RSPCA territory”. At least one of these cases has since proceeded to the high court which has found there is a case to argue. Had there been a specialist police officer available the matter may well have been dealt with more rapidly and efficiently.

It is worth pointing out here that there have been ongoing claims of corruption and conflicts of interest within the RSPCA, a number of which were outlined in an ABC TV Four Corners program *A Blind Eye* in June 2004. Whilst it is not AACT’s intention to speculate on this matter, we would simply point out the additional value of a more diversified alternative inspectorate should there be any substance to these claims.

#### **5.4 Power to undertake routine and spot inspections**

In the current Act under section 16, an officer may only enter, search and inspect a premises “if the officer reasonable believes that there is an animal, in respect of which and offence under this Act has been, or is being, committed.”

AACT believes this section must be amended, or another added, giving an officer/inspector the power to enter any premises where animals are kept for commercial or research or related purposes. at any time, without need to give prior notice,

Such provision would allow for routine and on the spot inspections of, for example, intensive farming operations, puppy farms and places where animals are bred for research purposes. As the vast majority of such places are kept hidden from the public eye, with very few people having access to them, it is highly unlikely that any breach of the Act would be discovered. An provision for routine and on the spot inspections without need for prior notice would substantially increase the chances of any breach being discovered, while also encouraging better animal care and management for fear of being caught contravening the Act.

#### **5.5 Breaches of the Act**

It is our view that the Act should create a strict liability regime of compliance. Strict liability means that guilt is established simply by proving that the breach occurred (ie the physical act or failure to act which constitutes the breach of duty) – no guilty state of mind such as negligence, need be established. As was pointed out in the Issues Paper, a similar approach is adopted in other legislative instruments including section 94 of the *Animal Health Act 1995*; section 62 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* and; section 64 of the *Meat Hygiene Act 1985* (Tas).

We also believe that breaches of the Act that amount to the imposition of fines should be increased in line with community expectations and attitudes. As an example, it is abhorrent to think that the maximum penalty for breaching an officer’s instructions is \$1000.<sup>8</sup> We submit that breach of an officer’s instructions should be a maximum of 1000 penalty units - \$100,000. We believe that all of the fines currently provided for in the Act should be substantially increased.

With regard to other sentencing options, AACT commends section 43 of the Act which provides that some persons convicted of breaches of the Act are disqualified for a certain period of time from having animals in their custody.

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<sup>8</sup> Section 14(2) of the *Animal Welfare Act 1993* (Tas).

Another sentencing option that should be looked at is an adverse publicity order. The purpose of adverse publicity orders is to force the convicted offender to inform others of the offence committed. For example, some adverse publicity orders have meant the taking out (at the expense of the offending organization) of ‘advertisements’ in newspapers or the writing of a letter to shareholders. Adverse publicity orders are currently provided for in the *Fair Trading Act 1990* (Tas) and the *Food Act 2003* (Tas). The implementation of adverse publicity orders could act as a powerful shaming tool when other sentencing options have proved inadequate.

### **5.6 Identification marks or devices**

Section 21A (1 & 2) States that an officer may attach a mark or identification device to an animal *in any form the officer considers appropriate*. AACT believes that this must be amended to state *in any form the officer considers appropriate so long as the method used does not cause unreasonable suffering to the animal*.

### **5.7 Power to kill animals**

Section 24 outlines who may kill an animals and why, however, there is no provision for *HOW* the animals must be killed. AACT believes that the Act must stipulate that the animal must be killed humanely.

### **5.8 Meeting and composition of Animal Welfare Advisory Committee**

As noted in the introduction, AACT is extremely concerned at the infrequency of meetings of the AWAC in recent years, especially considering that a review of the Act was to be undertaken this year. As the statutory body advising the Government on animal welfare matters, there is no excuse for the AWAC not being involved in the development of the issues paper. AACT considers that the Act must make provision for a minimum number of meetings per year of the AWAC and recommends that the AWAC should meet at least quarterly.

Additionally, AACT notes that three of the required members represent groups which use animals for commercial or recreational purposes, but only two members represent the specific welfare needs of the animals themselves. (We do not consider the Australian Veterinary Association nominated member to be a non-partisan representative for animal welfare, as the AVA has clear alliances to animal industries, and has stated its support for, amongst other things, the live export trade and mulesing of sheep). As such, AACT recommends that the membership of the AWAC be properly balanced so that the number of animal welfare representatives is at least equal to that of those members who represent animal users.

### **5.9 Disbursements of proceeds of Sale**

AACT notes that under section 46 of the Act,

“the proceeds of the sale of any animal or conveyance sold pursuant to an order or direction of a magistrate or court made under section 20, 21 or 22 are to be used-

(e) fifthly to reimburse the person who owned the animal or conveyance immediately before its sale.

AACT considers that the person from whom the animal or conveyance was seized should not profit at all from the sale of the animal or conveyance. AACT recommends that section 46(e) be amended to read:

(e) fifthly, to be paid into the Animal Welfare Trust Account

### **5.10 Rodeos and circuses**

AACT is extremely concerned that there are currently no provisions under the Act or regulations covering the use of animals in rodeos and circuses, and of further concern is that this omission has not been discussed in the Issues Paper. We urge the government and the AWAC to give immediate and serious consideration to animals used in rodeos and circuses, and to draw up provision to be included in the amended act that would cover the use of animals in these circumstances.

By their nature, rodeos and circuses expose the animals to treatment that at the very least compromises their natural behaviour and commonly treats the animals in ways that cause extreme physical and/or psychological suffering, terrible injuries and even death. As such, and considering that the animals' purpose is simply to provide questionable entertainment value, AACT would argue that the use of animals in circuses and rodeos be banned outright, (especially exotic animals in the case of circuses). There is growing community concern over the use of animals in circuses and rodeos and AACT believes that a ban on the use of animals in such situations is in keeping with community sentiment on the matter.

However, if there is not to be a total ban on the use of animals in rodeos and circuses then there must be provision made for the issuing of permits allowing a rodeo or circus which uses animals to go ahead. Such a permit must contain specific conditions which must be met by the person or organisation running the rodeo or circus. Such conditions must address the physical and psychological needs of various animals (e.g. in NSW it is an offence to keep a lone elephant), a prohibition on the use of tools such as electric prods, hooks and the like, and the requirement in the case of rodeos, that a veterinary officer be present throughout the event. The Act must make it an offence to hold a circus performance or rodeo without the organisers first purchasing a permit.

### **5.11 Compulsory reporting of offences**

Currently a person who is aware of a breach of the Act, no matter how serious the breach, is under no legal obligation to report this breach. AACT considers that this weakens the power of the Act and has the potential to expose animals to ongoing cruelty and suffering.

Whilst we are aware that such a provision may in some cases discourage a person from seeking veterinary attention for an injured animal if the person is responsible for the injury, or considers that they might be suspected of responsibility, on balance we believe that a compulsory reporting of cruelty clause would enhance the protection for animals under the Act. Similar concerns have been raised with compulsory reporting of child abuse under child welfare legislation, but the general consensus has been that compulsory reporting was vital to the proper application of the legislation. AACT considers the addition of a compulsory reporting of cruelty clause in the Animal Welfare Act should be seen in the same light.

AACT therefore urges the government to enact a provision for the compulsory reporting of animal abuse, cruelty, neglect and mismanagement similar to provisions contained in child welfare legislation.

### **5.12 Slaughter of animals**

AACT is concerned that there is currently nothing contained within the regulations or even the voluntary standards that covers the manner in which animals are slaughtered (apart from Brush Tail possums). Considering the huge numbers of animals slaughtered each year for meat and other products, it is essential that there are clear regulations covering the manner in which this must be done.

AACT considers that the Act must be amended to include provisions for the way in which animals are slaughtered, and that these provisions must include a requirement that all animals are humanely pre-stunned so that they are rendered insensible at the time of death. Additionally, animals must not be slaughtered within sight of each other. There must also be mandatory, specialist accredited training for all persons involved in the handling and slaughtering of animals.

Furthermore, AACT would draw attention to the issue of home slaughter, where currently anyone is able to slaughter an animal, regardless of their ability or experience and with no requirement for pre-stunning or for the animals not to be slaughtered in sight of each other. AACT recommends that the Act include provisions covering home slaughter, whereby there are clauses requiring that the slaughter be done by someone who has passed an accredited training program, that the animals must be humanely pre-stunned and must not be slaughtered within sight of each other

### **5.13 Removal of Act from Primary Industries Portfolio**

Currently the *Animal Welfare Act 1993 (TAS)* is overseen by the Department of Primary Industries. AACT considers that this is probably only the case in that many of the animals covered by the act (i.e. those under human management or control) are animals used in agricultural industries. In light of the fact that these animals are generally seen by the Department of Primary Industries as commodities, rather than sentient beings with their own self-interest (this being borne out by the introduction section of the Issues Paper which discusses benefits to consumers of updating the Act, with no mention of the benefits to the animals the Act is designed to protect), AACT submits that the Act should be taken out of the portfolio of Primary Industries and place into a more neutral portfolio such as the Department of Local Government such as is the case in Western Australia. AACT believes that this would be a more appropriate portfolio than Primary Industries, and we feel that government has a conflict of interest while the Act remains in the portfolio of DPIWE and purports to protect animals used in agriculture. Additionally, AACT believes that the repositioning of the Act within a more neutral portfolio would be more likely to reflect the intrinsic worth of animals rather than simply their commercial worth.

#### **5.14 Resourcing of Animal Health and Welfare Branch**

AACT understands that the Animal Health and Welfare Branch is currently understaffed. It is essential that the Animal Health and Welfare Branch is properly staffed and resourced if the Act is to be properly enforced. AACT questions whether the understaffing of the AH&W Branch is the reason for the infrequency of AWAC meetings and the apparent exclusion of the AWAC in the preparation of the Issues Paper.

#### **5.15 Penalties: Increasing the current penalties and setting of minimum penalties for breaches of the Act.**

AACT believes that the current penalty regime is manifestly inadequate and supports an increase in the penalties.

As noted earlier in this submission, AACT believes there is cause to increase the penalties in certain sections of the Act (see points 4.4 and 5.5 of this submission). However, we are also very concerned that there are currently no minimum penalties set. AACT believes that there must be minimum penalties contained within the Act. This would assist in avoiding situations where a case is seen to be of significant severity by the prosecuting officers and the general public, but where the convicted person receives a small fine which is not seen to reflect the nature of the offence.

#### **5.16 Companion Animals**

Companion animals are covered by the general and cruelty provisions of the Act, but there is no specific regulatory framework covering how they are to be kept. It is AACT's opinion that animals should not under any circumstances be sold at pet shops, since there is no requirement for vetting of potential owners, no follow up carried out, and no requirement for the animals to be properly identified (microchipping and registration), vaccinated or neutered. The tragedy of pet shop sales was highlighted recently in NSW, where a man was able to purchase dozens of rabbits from pet shops, over whom he was later charged with numerous bestiality offences. The dumping of any companion animal must attract a significant penalty, and the offender must be prohibited from having control of any animal for life. This provision must be monitored.

##### **a) Dogs**

AACT believes that dogs should only be available for sale from animal shelters or by reputable and registered breeders, and that, unless it can be proven that the animal is sought for breeding purposes by responsible individuals, all dogs should be compulsorily desexed. All dogs must be micro-chipped and registered.

It should be illegal to keep dogs (including Greyhounds) on chains or in close confinement for extended periods, as some are for their whole lives. Dogs kept under such conditions suffer appallingly. Various states in the US have variously implemented legislation thus:-

“Ordinance No. 1169

An ordinance to prohibit the chaining or tethering of dogs and mandating that dog enclosures must provide 150 square feet of space for dogs over six months of age be it ordained by the governing body of the city of fairhope, alabama, as follows:

Section 1. Any person owning and/or controlling dogs whether vaccinated or unvaccinated, licensed or unlicensed, shall not allow said animal to be tied or chained to dog houses, or other stationary objects.

Section 2. No person shall, at any time, fasten, chain, or tie any dog or cause such dog to be fastened, chained or tied while such dog is on the dog owner's property or on the property of the dog owner's landlord, or on any property within the corporate limits of the City of Fairhope.

Section 3. Any dogs confined within a fenced yard must have an adequate space for exercise based on a dimension of at least 150 square feet per dog. Provided, further that where dogs are kept or housed on property without a fenced yard, the owner of such dogs or persons have custody of such dogs shall provide an enclosure for such dogs meeting the 150 square foot per dog dimension. Such enclosure shall be constructed of chain link or similar type materials with all four sides enclosed. The enclosure shall be sufficient height to prevent the dog from escaping from such enclosure, and shall meet the requirements of the Alabama animal rights protection act 13A-11-241.

Section 4. Nothing in this ordinance shall be construed to prohibit owners or others walking dogs with a hand held leash.

Section 5. Nothing in this ordinance shall be construed to prohibit owners from allowing dogs to be attached to over head runs (i.e. leash or chain attached to an over head wire at least 10 feet long, that allows the dog to move unheeded)><sup>9</sup>

AACT is also of the opinion that dogs should not be carried on the backs of trucks and utilities, irrespective of whether or not they are "tied". The practice causes appalling injuries when sudden braking is applied or in the event of an accident. It is a dangerous and unnecessary practice.

**(b) Cats**

Cats should not be sold by pet shops, for the reasons detailed above. All cats should be desexed unless owned by a responsible and registered breeder, and all cats must be registered and microchipped in the same way as dogs.

**(c) Other companion animals (e.g. rabbits, guinea pigs etc)**

None of these animals should be available for sale as pet shops, for the reasons detailed above.

**5.17 Persons initiating prosecution to be indemnified**

Financial protection must be guaranteed for anyone seeking a prosecution for an offence. AACT believes that the person bringing the action should be indemnified by the Crown for any costs that might be awarded against the person should the case be lost. Many cruelty cases are currently not brought before the courts due a fear that should the case not succeed, a charity or non-government body seeking the action would be responsible for substantial costs. Additionally we would like to see provision made for civil action to be brought against a person committing an act of cruelty to an animal.

**5.17 Animal ethics committee (AEC)**

AACT believes it is essential that all AEC's must be made of of equal representation of members representing the interests of the animals and the institution. Furthermore we believe that all members of the AEC's must be given adequate training to enable them to perform their position effectively. All institutions using animals for research should also be subject to an independent audit or review process to establish whether they conforming to AEC , NH&MRC and other guidelines.

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<sup>9</sup> City of Fairhope Ordinances, <http://www.dogsdeservebetter.org/modellaws.html>

## 6 Conclusions

AACT welcomes the opportunity for amendments to the current *Animal Welfare Act* and, as indicated in this submission, is in agreement with the positions taken by the Working Group on a number of the matters raised in the Issues Paper. However we are concerned that some aspects of the Issues Paper appear somewhat regressive or are in conflict with the spirit of the Act. Considering that this may be the last opportunity for legislative change for animal welfare for some time, it is imperative that the any amendments to the current *Animal Welfare Act* take a progressive stance and do not compromise or weaken the Act's ability to protect *ALL* animals.

AACT urges the Tasmanian Government to take the recommendations of this submission into account when drafting the final amendments to the legislation. We look forward to the opportunity of commenting on any further discussion on the Act, the Standards and regulations in the future..

## 7 References

*Animal Welfare Act 2002* (WA)

*Animal Welfare Act 1992* (ACT)

*Animal Care and Protection Act 2001* (QLD)

Brambell, FWR (Chair), *Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems*, (London : HMSO, 1965) In *Study by the Productivity Commission into the Banning of Battery Eggs – Sale and Production – in the Australian Capital Territory, and into a Labelling Requirement Regarding Eggs: Submission by Animals Australia*, (Melbourne : ANZFAS, 1998)

City of Fairhope Ordinances, available at <http://www.dogsdeservebetter.org/modellaws.html> (accessed 17th September 2005)

*Justices Act 1959* (Tas).

*Prevention of Cruelty to Animals Act 1986* (Vic)

RSPCA Australia website, <http://www.rspca.org.au>, (accessed September 20 2005)

Tasmanian Law Reform Institute, '*Corporate Manslaughter*' *Issues Paper*. As found at <http://www.law.utas.edu.au/reform/> (Accessed 18<sup>th</sup> September 2005).

*Workplace Health and Safety Act 1995* (Tas).

## **Appendix 1**

### **AACT Comments on Specific 'Standards'**

#### **A) Inconsistencies between the Standards and the Act**

The use of electric goads - the Act specifies that they are only to be used by registered veterinarians yet AACT believes that they are commonly used in the handling of animals, especially in loading and unloading and also at rodeos.

The Standard for Animals in Saleyards details that animals become "foresore" if left on concrete for extended periods, so this is to be avoided, yet pigs are forced to remain on concrete or other hard flooring for most of their lives, with lameness and other manifestations of suffering as the result

Intensively farmed rabbits suffer similar injuries from being forced to spend their short lives in cages with wire floors, causing them significant pain and suffering

There is no Government approved Standard for the Greyhound, Horse Racing, Circus or Rodeo industries (the latter would be one where the use of electric goads would be extensive).

#### **Sheep (Standard No. 1)**

The Standards detail, amongst other voluntary provisions, surgical procedures which may be, and are, carried out upon sheep without anaesthesia, including ear marking, tail docking, castration, mulesing, pizzle dropping and dental procedures.. In many cases, these procedures have nothing to do with the welfare of the animal and everything to do with economics, and cause serious suffering to the animals undergoing the procedures. Mulesing, for example, is a brutal mutilation carried out because it is cheaper than the humane alternatives to protect sheep from flystrike. Pizzle dropping is another appallingly cruel procedure, carried out to prevent compromise to the value of the fleece.

#### **Cattle (Standard No. 2)**

Again, the provisions contained in the voluntary Standard clearly inflict pain and suffering on cattle, including spaying without anaesthesia, hot iron branding and tail docking. All of these procedures can, and are, carried out by untrained people rather than veterinary officers and cause the animals considerable pain and suffering for human convenience.

The feedlot at Epping Forest in the North of Tasmania contains hundreds of cattle at any one time, where they cannot exercise any of the above freedoms, including exercise, and in conditions that are alternatively dusty or muddy, yet it appears to be unregulated. Even if it were regulated, the Standard is voluntary and a minimum standard, and again this clearly breaches the cruelty provisions of the current Animal Welfare Act.

#### **Pigs (Standard No. 5)**

The Standard for pigs (and the regulation for battery hens) probably demonstrate best the voluntary nature of the Standards and clear, ongoing breaches of the Cruelty provisions of the Act,. A recent report by the Pork Industry itself noted that most sow stalls do not comply with the "Model Code of Practice for the Welfare of Animals – Pigs".

The vast majority of sows at intensive pig farms are confined for the major part of their lives in what are effectively heavy cages only marginally larger than their bodies. A recent visit to a pig farm operator in the State indicated that "his pigs are lucky, they can move a step forward or

back”. There is a multiplicity of evidence available that pigs are of similar or even great intelligence and sensitivity as dogs, yet under the Act dogs cannot be confined in such inhumane circumstances. Pigs kept in the conditions described are effectively driven insane from the terrible physical and psychological suffering caused by these appalling conditions.

AACT believes that there can be no possible justification for keeping any animal in such conditions, and draws the attention of the Minister to the fact that sow stalls are banned in the UK and Florida and are being phased out in the European Union and New Zealand. AACT urges the Minister to include in the review of the Act a total ban on sow stalls.

Further, the “surgical procedures” practiced upon pigs, including castration, teeth clipping and nose ringing are cruel and abhorrent, carried out without anaesthesia, and would be totally unnecessary if pigs were raised in a more natural environment.

### **Animals in Saleyards (Standard No. 6)**

Clearly the Duty of Care provisions for Animals in Saleyards requires a review, if saleyard operators are able to “opt not to accept duty of care for animals left there” as currently stated on a sign at the Bridgewater Saleyards. Saleyard operators must be made to provide shelter for the animals held there, since there are extremes of heat and cold in the State at times. The Bridgewater near Hobart, as well as electing not to accept Duty of Care, provides no supervision for animals left there, who AACT members have observed are frequently left in concrete sale pens over weekends without food or water (S3.3 of the Standard states that “... animals kept on concrete may get footsore.... The keeping of animals on concrete for long periods should be avoided”. Even animals left in what are known as “dirt pens” are frequently without food, and if they have water, it is often filthy.

The question must be asked (and is especially pertinent to point 5.1 of the Issues Paper) “If the saleyard operator chooses not to accept a Duty of Care, then who is responsible for the welfare of these animals at the saleyard?”

### **Road Transport of livestock (Standard No. 7)**

The Standard (again voluntary) specifies that vehicles should be “safe”, and not overloaded. AACT representatives attended the loading of the live export vessel the “*Al Shuwaikh*” in February 2005, and noted and photographed vehicles that were both unroadworthy and overcrowded, with animals “down”, injured and dying (we understand that some 1200 sheep were destroyed after arriving at the wharf in Devonport). Cattle trucks were used frequently to transfer sheep from the feedlot at Nook to Devonport, although we recognize that this was a short journey. We did, however, observe drivers stopping before the wharf gates to “right” their loads. These observations and others lead us to suggest therefore that this Standard is largely ignored.

### **Transport of animals across Bass Strait (Standard No. 8)**

AACT has significant concerns about the welfare of animals transported across Bass Strait. Although the Standard recognizes the length and conditions of the journey, it has been reported that, when the animals arrive in Victoria, their prior journey time is not included in calculations to do with resting and feeding. A large number of animals transported across Bass Strait therefore could be unloaded off the (Roll-on/Roll off) ships (the ships we are aware of are the “*Searoad Tamar* and the *Searoad Mersey*” then subjected to extended road transport. The Standard itself describes the journey as “up to 30 hours”.

We are informed that 330,000 sheep were transported across Bass Strait last year, of whom 70% were sent on live export vessels overseas. This would, we assume, involve a further road journey to Portland, another four hours at a minimum for the already stressed animals.

AACT's view is that an arrangement with the Victorian government in relation to monitoring journey time would address this issue, and that this requires detailing in the scope of Standard or the reviewed Act.

According to expert opinion "The live transport of animals compromises the five freedoms as animals are likely to be hungry, thirsty, uncomfortable and distressed, they are restricted in movement and behaviour and are often injured<sup>10</sup>". Yet, the standards currently allow for this kind of transport.

### **The transport of Bobby Calves – Standard No. 11**

AACT finds it immeasurably sad that these innocent victims of the dairy industry are defined in the way contained in this Standard. These animals are distressed by the loss of contact with their "dams" and transported to slaughter within days of birth. It is AACT's opinion that there is no Standard that will properly address the particular animal welfare needs of such young animals. Furthermore, it is totally unacceptable that they should be exposed to the trauma of transport across Bass Strait

### **The hunting of Wallabies – Standard No. 13**

AACT finds this standard particularly defective – and even abhorrent in a number of its provisions. Firstly, the Standard states that it is in no way an attempt to curtail the hunting of wallabies in Tasmania. Since these activities are mostly carried out without supervision by informal arrangements, AACT's view is that the Standard itself seriously compromises the welfare of wallabies in the state. Further, the Standard provides for the use of shotguns and dogs, both of which AACT believes are inconsistent with community values in relation to native wildlife and animals generally. The use of dogs is particularly irresponsible, particularly as it is documented in the Standard; dogs trained to hunt will seriously maim and injure an animal long before a shooter has time to "quickly and humanely dispatch the animal". The Standard discusses at length issues to do with "wounded animals" which attests to the fact that the majority of animals are not, in fact, dispatched quickly and humanely" at all.

### **The Intensive Farming of Rabbits – Standard No. 14**

AACT regards the intensive farming of rabbits as similarly cruel to the methods used to farm "domestic fowl" and pigs. Rabbits are kept in wire cages, in which they have little or no room to move, and which of course clearly breach the cruelty provisions of the Act. Furthermore, it is known that such housing causes the animals significant pain and suffering through damage to the feet and legs from this confinement and that the pain is chronic and lifelong.

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<sup>10</sup> (Appleby, 1999) RSPCA Australia website, [http://www.rspca.org.au/resource/article\\_define.asp](http://www.rspca.org.au/resource/article_define.asp)

## Appendix 2

### **Animals Australia Review of the Model Codes of Practice for the Welfare of Animals. Final Report' by Geoff Neumann and Associates – February 2005**



17 June 2005

### **Animals Australia**

comments on the

Review of the Model Codes of Practice for the Welfare of Animals  
'Final Report' by Geoff Neumann and Associates – February 2005

#### **Introduction:**

**Animals Australia** welcomes this examination of the role and effectiveness of the Model Codes of Practice (the agricultural industry codes), and the associated State and Territory Codes of Practice, Guidelines, Standards and 'Agnotes', as they are variously called.

We were pleased to be able to provide direct input to the review through discussion with Geoff Neumann.

#### **Animals Australia's concern about Codes of Practice:**

The information provided in the 'Final Report' by Neumann, and thus the outcomes of this review, only strengthens our considered view that the Model Codes of Practice (and State/Territory equivalents) do not provide an animal welfare benefit and in fact, authorize and sanction cruelty to animals. (see Appendix I).

Further, the inevitable conclusion, based on all available facts, is that Codes of Practice exist primarily to permit practices to agricultural animals that would normally be considered prosecutable breaches of the general provisions of animal protection legislation in each state of Australia.

#### **Animals Australia submission regarding the 'Codes of Practice' review:**

1. Codes of Practice act to provide public defences and legal exemptions to cruelty allegations denying production animals the legislative protection afforded to other animals.
2. Allowing such exemptions and defences to cruelty provisions in association with negligible monitoring and compliance combined with the inability to enforce even minimum standards, are the singular greatest cause of animal suffering in Australia.

3. That any regulatory system which permits legislative inequities that are scientifically and ethically unjustifiable and in conflict with the standards of accepted care as defined by the purpose in state animal welfare legislation, should not be considered acceptable by government, industry, welfare groups or the community.
4. That all animal industries should be subject to the general provisions of each state's animal welfare act, as are every other member of the community in regards to their actions and the level of care that they provide to animals.
5. That an extensive public awareness campaign relating to current agricultural practices needs to be undertaken to ensure that informed public comment can be made to this review.

**The following points support Animals Australia's assertion that the 'Codes of Practice' system has contributed to animal suffering in Australia:**

- the legal exemptions permitted to operators from prosecutions under cruelty provisions under relevant animal protection laws in most jurisdictions for practices which arguably comply with the Codes; and
- the combination of 'motherhood statements' and descriptions of permitted practices that cause animal suffering in the various Codes;
- the lack of inspection, absence of auditing for compliance, and failure to enforce even minimum standards, by agriculture authorities or officers authorized under welfare legislation;
- the clear examples of widespread lack of compliance with even minimum standards within Codes of Practice which in themselves could be ethically and scientifically argued to be cruel.
- considerable evidence available through media statements and letters from industry bodies, retailers and government representatives that the existence of Codes of Practice have been used to alleviate the concerns of consumers questioning the welfare aspects of methods of production of agricultural animals.
- thus, the community has been misled to believe that welfare standards are equal to that of domestic animals; have been of primary consideration, are regularly monitored and are enforceable. As a result consumers have been prevented from making a considered choice of purchasing more humanely produced products and in doing so from encourage the further development of such systems.

**Animals Australia proposes that the importance of this review, in consideration of the potential outcomes for millions of animals, is such that a concerted public awareness campaign should be undertaken. This is required to ensure that the community/consumers of agricultural products are fully informed and alerted to the opportunity of providing their views to this debate.**

**Currently the community is completely unaware that a different standard of care is allowed for agricultural animals. Clearly, this needs to be addressed to ensure that the 'will of the people' on which all legislation is based is encompassed in this review. Only a concerted public awareness campaign fully advising the community as to current**

**agricultural practices that have been permitted within ‘codes of practice’ will allow the public to be able to make informed comment.**

**Evidence in support of Animals Australia’s conclusions:**

**Notwithstanding Animals Australia’s submission that Codes of Practice are responsible for animal cruelty and therefore should be abandoned – the following background information is provided to highlight the unjustifiable inequities ‘codes’ allow and the influence of industries within processes which prohibit animal welfare from being the primary concern.**

**Animals Australia** (ANZFAS in the past) has been involved to a varying extent with the review of Codes of Practice (both Model Codes and State-based Codes) for the past 2 decades. This participation was based upon the belief that the Code reviews provided an opportunity for input to the standard of animal welfare permitted. However, our comments on drafts of Codes, although based on both common sense and scientific literature, were rarely taken on board by the then-Code reviewers, and there was no evidence that the Codes were altering behaviour or practices.

As a result, in the mid-1990s **Animals Australia** took a policy stance of no longer spending scarce resources (particularly time) on providing extensive input to such processes, and in fact declined to provide comments on most Codes. The primary exceptions to this policy were those Codes which could and would be likely to be enforced e.g. the *Code of Practice for the Care and Use of Animals for Scientific Purposes*, and a number of Codes attached and enforceable via legislation (e.g. the Victorian Domestic Animals Act).

In 2000 a ‘Code Writing Group’ was established to review the Poultry Model Code, and in 2004 a review of the Pig Model Code commenced using a ‘Code Writing Group’ which included provision for animal welfare and other representatives. **Animals Australia** made the decision to accept an invitation to participate, fully aware that enforceable animal welfare reform had been achieved in both industries in the European Union and that the potential existed for a similar reasonable program of significant reforms to be achieved through ‘round table’ discussions in Australia.

### **Poultry Code Review**

Minor changes to the Code were achieved through **Animals Australia** and RSPCA participation. However the real reforms needed had already been stymied by the ARMCANZ-agreed parameters. Equally significant (and now evident), is that the (ARMCANZ/industry) agreed and expected implementation of a national Quality Assurance (QA) program to ensure compliance to even the low standard set by that Code has not yet been implemented by egg producers.

The egg industry rejected a comprehensive animal welfare audit system prepared by the Animal Welfare Science Centre. Further, its own subsequently adopted minimalist QA program ‘EggCorp Assured’ is still a voluntary system and has to this date only been taken up by two free range producers [though a number of egg producers have recently applied]. [Existing proprietary QA systems are similarly devoid of comprehensive animal welfare requirements and are voluntary].

The nationally-agreed QA program was purported to be the tool to ensure that animal welfare standards, descriptive egg carton labelling standards, and ‘beak trimming’ standards, were adhered to. There is no evidence to suggest that the entire process has been legitimate. There currently is no systematic evidence of compliance.

## **Pig Code Review**

The pig industry (APL) has refused to provide full and frank input to the Animal Welfare Working Group writing group during this Code review process, and thus the 'round table' approach has been flawed and unsatisfactory. Further it has become clear that the primary consideration of key aspects of the review are economic considerations and that animal welfare has been secondary – even though this code purportedly exists to protect the welfare of pigs, not the welfare of industry operators.

The final 'arbiters' of the Code review process are essentially all Government agriculture/primary industries Ministers whose primary 'clients' or 'stakeholders' are animal industries. Therefore there is no independent arbitration in the decision making processes impacting on the welfare of millions of animals in this country. It is not facetious to suggest that the lack of voting power of animal residents in this country have impacted on political decisions as to the animals' welfare requirements.

## **Misleading the community - Codes of Practice Propaganda**

Animal industries, retailers and governments continue to 'use' the existence of Codes of Practice as a primary defence to welfare concerns within animal welfare industries. This is despite the fact that these codes exist to provide exemptions to cruelty prosecution and that there is a total lack of compliance tools or proof of compliance with even basic husbandry needs. The community is being deliberately misled. Instead the community should be informed and educated about how current practices have evolved (essentially) to provide lower prices, and then provide them with the informed choice of spending more money to ensure better welfare outcomes for animals.

## **Non-Compliance with Codes**

As the 'Final Report' from Neumann confirms, there is no current effective methods or dedicated resources to check compliance and thus adherence to the Codes of Practice. However, some studies and anecdotal reports are available – and all conclude that the Codes are largely ignored.

In 1991, a comprehensive survey was conducted to look at the awareness and effectiveness of the introduction of the Pig Code of Practice. That report was conducted by C.G. Winfield of the Victorian Animal Research Institute for the then-Sub-Committee on Animal Welfare (SCAW).

The **Winfield Report** is entitled '*Review of the Impact of the Code of Practice for the Welfare of the Pig*', and its aim was to '*examine the impact which the Codes have had on practices at the farm level and if necessary to recommend measures to improve the extent of dissemination and the degree of acceptance and implementation of the Codes by industry*'.

### **The Winfield report found that**

the Code of Practice (for the welfare of the pig) was widely considered to have had very limited impact on management practices at the farm level because:

- the Code of Practice had been poorly disseminated to industry
- the Code reflected current practice at the time it was released and most producers largely met the guidelines and had little need to be aware of the Code or change their practices
- industry advisers did not seem to see the Code of Practice as relevant to day-to-day management advice and did not refer to it in technical publications
- it has status under legislation only in Victoria and South Australia

This review was based on surveying attitudes. What is very obvious is that it does not give any indication that the introduction of a Code of Practice in the pig industry had any impact in altering or improving practices. There is no evidence that this situation has improved since 1991.

The Winfield survey also sought views on whether some level of legislative backing for Codes was required. It found that only the producer organisations and some individual producers opposed this. Veterinary organisations, animal welfare groups, industry advisers and each of the States agricultural department respondents all agreed, and even some producer respondents indicated that they felt that failure to meet the guidelines should be grounds for legal action.

A more recent (2004) internal pig industry **survey conducted by APL** is not publicly available, but should be made available to the AWWG in regard to crucial evidence in regard to compliance, particularly in regard to the physical dimensions of the breeder sow housing. As was the case in 1991, some producers (and perhaps industry advisors) have failed to consult the Code even when new facilities or housing was planned and constructed.

### **Producer awareness of Codes:**

As was found in the Winfield Report, awareness of the existence of Codes is regularly lacking. In 2001, the Queensland Department of Primary Industries surveyed farmers in that State about their awareness of the livestock codes of practice relevant to their industry (information provided to NCCAW). The survey did not measure the level of knowledge of what was in the codes, just whether the farmers had heard of them and whether they had a copy. The figures provided are insightful:

Industry	Heard of the code	Have the code
Beef	53%	13%
Dairy	60%	14%
Sheep	54%	13%
Pigs	60%	27%

Whilst such a survey does not indicate non-compliance with the minimal requirements of a Code of Practice, it does indicate the level of respect and intent of both government and industry bodies towards the existence of such codes in ensuring knowledge and compliance.

### **Anecdotal evidence:**

An abundance of anecdotal evidence exists in regards to lack of knowledge and non-compliance with even the minimal requirements of codes of practice.

- 1) Farmers have commented that teeth grinding of sheep continues (e.g. to the Animal Welfare Advisory Committee in Victoria), and some have said it is widespread, despite the Sheep Code indicating it causes acute pain and there is no evidence that it has any production or other benefits.
- 2) A Victorian industry spokesperson has advised (personal communication) that a number of egg producers have their hens at up to double the density (in sheds, not cages) than is indicated as the maximum density in the Poultry Code.
- 3) Tail docking of whole herds of dairy cows is still common in some areas (usually the wetter areas) including in Victoria (Source: survey by Barnett of Victorian Institute of Animals Science, DPI) despite the Code clearly indicating that this practice is not to be

undertaken unless 'for udder or herd health' and if so, only under anaesthesia. There is no scientific evidence of udder or herd health issues associated with tail length.

- 4) Anecdotal reports of pigs being transported for between 60-70 hours (across the Nullabor) when 48 hours is the maximum (Source: government officer comments at the Victorian AWAC and at NCCAW).
- 5) Mulesing continues to be done in many instances by untrained people, and the Code-recommended 'modified' mules is not always the method used. The NSW Contractors Association has apparently surveyed sheep at saleyards and noted that between 60-80% of sheep have been incorrectly mulesed (radical mules or crooked tails through unskilled jobs). At least 2 Victorian mulesing contractors are said to be doing the radical mules (Source: information from veterinary and farming representatives to the Victorian AWAC).
- 6) Recent comprehensive documentation (by Animals Angels) of sheep transport between WA feedlots and live export ships, showing injured and downed animals, and over loaded trucks arriving regularly at the wharf (in contravention of the WA transport Code and the new *Australian Standards for the Export of Livestock*).
- 7) A principal of a sheep farming enterprise volunteered to a Victorian government advisory committee that he had only recently become aware of the existence of the Sheep Code of Practice and that his staff and contactors (mulesing, marking, shearing) had previously had no knowledge of the Code's existence or requirements.

Despite these significant breaches of the Code, and the further unnecessary suffering caused by these practices (which should constitute 'cruelty'), no charges have been laid, nor to our knowledge has any specific action been taken to ensure minimum standards are achieved.

### **In summary:**

All of the major agricultural industries have had Codes in place since the early 1980s – over 2 decades – yet there is no evidence to suggest that Codes have positively influenced practices. Instead they have served as both legislative and public defences of practices that, if judged by the general provisions of animal welfare legislation, could be proven to cause unnecessary suffering to animals. These practices are then unwittingly financially supported by the purchasing decisions of an uninformed and misled community.

### **Animals Australia's response to the recommendations of the Neumann report:**

Whilst Animals Australia supports the 'Final Report' findings of lack of compliance and enforcement, the suggested recommendations of the report do not provide Animals Australia with any confidence that significant effective changes will occur.

Development of the Standard – whilst a more formal consultative approach, and a 'consensus' approach is proposed, arguably this was attempted in both the Poultry Code review and the Pig Code review, and neither has resulted in a consensus outcome. The absence of respect for the value of ethical views and scientific evidence of animal suffering, and the apparent bias toward the economic impact on animal industries, dictate minimal changes occur, and inadequate animal welfare provisions persist.

Enforceability – it is not clear what the mechanism will be for the 'Standards' legal enforcement. The Final report says 'the proposed Standards ... are intended for inclusion or reference in State and Territory legislation'. The Codes are already 'included' in South Australia, and 'referenced'

in some manner in each of the other States/Territory. Further, the resources allocated by each State and Territory to mount enforcement activity (assuming the Standard is an enforceable instrument – a big assumption) will be presumably up to each jurisdiction. The record of most States/Territories to date in regard to enforcement, not only of the Codes but of the animal welfare Acts also, is abysmal.

### **The way forward?**

Given that Animals Australia has grave concerns about the likely content of the eventual 'Standards', its recommended approach is instead for all State and Territory animal welfare legislation to be reviewed, harmonized and strengthened to ensure the 'cruelty' provisions are adequate to both prevent where possible, or to punish those responsible for cruelty and/or animal suffering in each jurisdiction. This would, in particular, mean the prompt removal of the current legal exemptions for whole classes of animals from the protection of the Acts.

The 'Five Freedoms' as articulated by the UK Farm Animal Welfare Council would be a reasonable basic approach to providing the key legislative principles. These 'Freedoms', or indeed the general cruelty provisions coupled with existing legislative 'purposes', should apply equally, regardless of species or industry or animal use. No Code or Standard or otherwise exempted practice should be permitted to debase the legislation i.e. through conflict with the original purposes of the law. Individual jurisdictions may then wish to add specific practices that would be specifically banned or modified [i.e. to provide a higher or more specific articulation of the principle clauses].

It is the strong view of Animals Australia that the 'Codes of Practice' regimes have failed to ensure the welfare of animals. A further modified version is not warranted.

The recognition that animals suffer and need to be protected from acts of cruelty is enshrined in legislation in each State/Territory. This legislation defines actions and inaction that society and science have deemed to be cruel to animals. Neither society nor science has determined that animals do not suffer equally. Therefore there can be no basis for Parliaments continuing to allow standards that do not provide sound, equitable and ethical protection for all animals in law.

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## APPENDIX to Animal Australia report.

### EXTRACTS from the:

Review of the Model Codes of Practice for the Welfare of Animals  
'Final Report' by Geoff Neumann and Associates – February 2005

The following selected extracts highlight the problems with the development and implementation of the Australian Codes of Practice for agricultural animals – as found in the above-named report:

#### Page 9 – Application and legislative support

Despite the original intent of nationally agreed Codes providing a basis for improved uniformity in animal welfare regulation between jurisdictions, the outcome has been **disappointing**.

....

The outcome is a lack of uniformity with the status of Code provisions varying from non-enforceable guidelines to a duty of care carrying penalties for non-compliance. Conforming to the provisions of a code can be used as a defence in legal proceedings but there is also some feeling that this may result in conflict with regulations and potentially prevent otherwise successful prosecutions. This outcome causes confusion within the national livestock industries **and provides opportunities for some provisions to be readily ignored**.

.....

Codes are not considered regulatory documents in several **jurisdictions but can be used as a defence in proceedings in most States and Territories**. This means that if an animal owner is complying with a code, **even though a provision in the code may be seen as cruel by some groups, a successful prosecution would be unlikely**. Thus unless Codes are subject to a review process, they may provide protection or perpetuate management practices that are no longer acceptable to the public.

Partly because of the variable way in which Codes are used under State and Territory legislation there is little consistency in enforcement of any provisions. Most importantly, however, **it is a lack of inspectorial resources and will to enforce** that appears to impact most on Code enforcement.

This inconsistent approach to the purpose and enforcement of Codes in the face of international scrutiny and rising community expectations **reflects poorly on Australia's** position as a major livestock producing and exporting country. In their current form it appears that Codes do little to provide consistency, provide poor support to regulators, result in considerable additional work producing codes suitable to some States and generally satisfy few expectations. Options to address these issues and prepare national animal welfare standards suitable to current aspirations for their use, is the subject of much of the second part of this Report. (AA emphasis)

Further extract in regard to the attitude of the agricultural industries.

Page 10 - Attitudes – livestock industry attitudes

It is difficult to provide a collective view of what the livestock industries think of Codes as each industry is impacted differently. However, there is a general concern that involvement of the industries in Code development was **based on documenting existing management practices and that compliance would be voluntary**. The move in some jurisdictions to mandate provisions and the move to repeatedly review and potentially incorporate increasingly more onerous requirements, result in some apprehension about the ultimate outcome.

In general, **livestock producers want less regulation rather than more**; yet find that their involvement in the consultation and development leads to minimal standards that may become binding. As a result there has been a move in some industries to develop their own animal welfare strategy, eg the egg, chicken meat, dairy and beef feedlot industries have well developed processes to provide information to their members. However, it is very difficult for them to influence the attitudes of producers who are not members of industry organisations and do not follow an otherwise “industry agreed” quality assurance or accreditation program.

[**Bold** emphasis added by AA]

Extracts end.