

29<sup>th</sup> November 2005

Committee Secretary  
Senate Rural and Regional Affairs and Transport Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Dear Sir/Madam,

**RE: NATIONAL ANIMAL WELFARE BILL 2005**

This letter is in response to a notice for public submissions which has been posted on the Australian Senate Website regarding the National Animal Welfare Bill 2005. The National Animal Welfare Bill covers a range of issues relating to the treatment of animals.

Parts 1-7 are concerned with many aspects including animals kept by individuals as pets and aims to protect animals from cruelty, pain and distress inflicted on them by their owners either deliberately or inadvertently.

Part 8 is concerned with "Animals used for Experimental purposes" and deals with a range of issues relating to the Institutions undertaking animal experimentation, the individual researchers themselves and the Institutional Animal Units that look after the animals. The Bill includes proposals to require:

- Individual licensing of researchers, suppliers and institutions.
- Publication of notices of applications for a licence in local and national newspapers stating the time and place at which the Authority will meet to consider whether to grant the licence.
- A public register, including details of all licences names and addresses kept and open for inspection and selection of extracts, free of charge, by members of the public.
- Extensive annual reporting including details of the number of animals utilised for breeding colony maintenance; and the number of animals surplus to requirements which were culled.
- Declaration of commercial interests and funding sources.

**Overall Comments**

The National Animal Welfare Bill has several critical flaws that threaten the delivery of good animal welfare in Australia, if the Bill were passed into law. Universally applied standards on the care and use of animal for justified

research purposes is a positive measure to address any disparity in the requirement and the practice of good animal welfare in different States of the country, but such standards are already in place. In its current form, the Bill is likely to do serious harm to Australia's efforts to improve the health of its people and animals through ethical research involving animals. Considering major diseases and current pressing risks such as avian flu, it unacceptable and dangerous to harm or curtail medical research in this manner.

This Bill has the potential to seriously curtail, if not halt, medical research in Australia. Who would then do the research required to reduce the burden of diseases like heart disease, Alzheimer's, Parkinson's, cancer, diabetes and congenital defects. Additionally research involving animals also benefits the health of animals; e.g. antibiotics and vaccines for use in domestic animals for diseases like distemper, parvovirus and hepatitis in dogs; influenza, enteritis and leukaemia in cats, and tetanus in horses and sheep.

There are serious concerns that call into question the purpose of the Bill. These concerns have not been addressed:

- Why is such a Bill required?
- What issues of animal welfare are not being appropriately or adequately covered at present?
- Are there glaring defects in the current public policy that applies to the use of animals for scientific purposes?
- Will they be rectified by the Bill?

The answer to all these questions is simply no.

### **What is the context for the Bill?**

The Bill does not set appropriate contexts. It fails to clearly acknowledge that people have a close association with animals and use them as companions, for sport and entertainment, and in agriculture. By being silent on the fact that animals will continue to satisfy a range of human needs, the Bill sets the scene for progressive restrictions on the use of animals rather than progressive improvement to the way in which animals are used or treated.

### **Lack of total approach**

The Bill does not appear to consider that a total approach to animal welfare requires both the prevention of poor behaviour towards animals and the encouragement of good behaviour towards animals. The Bill would institute thorough on-going command-and-control approach to an area that requires a different approach - a combination of personal responsibility and motivation to do good, with sufficient knowledge of animals that allows this to happen. Good intentions without competencies do not guarantee considerate animal care.

Poor animal welfare has three causes: deliberate cruelty, neglect and ignorance. The law might be able to prevent bad animal welfare by acting against cruelty and neglect. However it has limitations in relation to ignorance. The law cannot educate the heart, mind and hands to improve the lot of animals. Alone, a National Animal Welfare Bill cannot create good public policy. The one-dimensional approach it entails will in all likelihood be regressive.

### **Mistaken assumptions about the nature of codes of practice for animals in Australia**

The Bill, particularly Part 8, seems to have been put together without reference to the broad and effective range of existing structures to deal with animal welfare in Australia and the evolutionary improvement that has taken place over 40 years. The system of public policy instruments that can apply to animal welfare are already at the core of the Australian Animal Welfare Strategy. These include legislation, codes of practice, industry self-regulation, quality assurance and best practice. The National Animal Welfare Bill threatens this existing strategy.

The role of codes of practice in animal welfare has evolved in Australia since the very first code for animals for scientific purposes was published in 1969 and the first model codes for farm animals in 1983. Understanding about the role of codes of practice in animal welfare has evolved in Australia to 2005. Codes of practice are guides that provide information on responsibilities and concepts that are not always amenable to legislation, in the way that standards are measurable and auditable specifications which can be incorporated into legislation.

The *Australian code of practice for the care and use of animals for scientific purposes* is published by the National Health and Medical Research Council (NHMRC). It was developed by a widely representative group including State and Territory government representatives, the animal welfare lobby, Australian Research Council, the Commonwealth Scientific Industrial Research Organisation, and Australian Vice-Chancellors Committee in conjunction with the NHMRC. The Code is incorporated into each State and Territories' animal welfare legislation and has sanctions by law. It would seem that the Commonwealth is now taking over the State's regulatory functions to become the new over-arching 'Authority'. Will the States and Territories concede the powers they already have? If not, there will be imposed another layer of regulation that may not be fully consistent with State and Territory legislation, inevitably leading to jurisdictional conflicts. All for little benefit. The present system works well, with the Code presently being the unifying national factor for the State and Territories.

The Code specifies the requirements for research and animal welfare which is the responsibility of a properly constituted Animal Ethics Committee (AEC). Institutions, including commercial organisations, that use animals for scientific

purposes are required by the Code to establish one or more AECs. Sanctions are imposed directly on institutions in receipt of NHMRC funding if they, the Animal Ethics Committee or their researchers breach the Code. In other words, researchers lose their labs and their funding, and so do their institutions and therefore colleagues.

It is our opinion, therefore, that the activity and responsibility of the proposed National Animal Welfare Authority regarding the use of laboratory animals for biomedical research overlap unnecessarily with those presently undertaken by the research institutes, educational institutions and state regulatory agencies. In the State of New South Wales for example, and at our Institute:

- Animal-related research work is currently subject to a rigorous set of standards of animal care and ethics, as stipulated in the Animal Research Act 1985 and Animal Research Regulation 1995, and the Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (2004).
- The Children's Medical Research Institute (CMRI) (and indeed, all research centres) has established protocols and mechanisms for regulating and overseeing the use of laboratory animals for research, which is implemented by the Animal Care and Ethics Committee (CMRI), a joint committee of the CMRI and the Children's Hospital at Westmead (CHW).
- The ACEC comprises of four categories of members: veterinary practitioners, animal researchers, animal welfare representatives and independent persons, which ensures a comprehensive coverage of scientific and public /lay opinion; the composition of the ACEC is compatible in principle to the broad membership of the National Animal Welfare Authority and to the intention to engage public participation.
- Research projects that involve the use of animals must be evaluated by both the Scientific Advisory Committee of the CHW and the ACEC. Approval must be obtained prior to commencement of the research work, and the progress of the work requires regular review via annual reporting and ad hoc reporting whenever it is required.
- The record of activity of the ACEC and nature of the research projects approved are provided as formal reports to the Animal Welfare Branch of the NSW Department of Primary Industries; this information is accessible by the public through this government agency, and therefore fulfils the requirement of public disclosure of all the approved research involving the use of laboratory animals and the outcome of these scientific investigations.

In the light of this, we submit that the purpose and role of the National Animal Welfare Authority will duplicate the effort currently invested in the responsible practice that meets the standards of animal welfare in the State of NSW, in particular by our research organization.

The National Animal Welfare Authority should therefore delegate its authority and activity, where appropriate and justified through administrative review, to the Institutional ACEC which has proven to operate properly and effectively in implementing animal welfare standards and practices.

## **Public Disclosure**

The requirement for the public disclosure of the names of all persons to be licensed to use animals for research purposes "Paragraph 114 Inspection of register" creates an opportunity for abuse of this information by extremists that oppose all forms of animal research (whether ethical or not). This will constitute a genuine security threat for all researchers. It would additionally be a violation of individual rights and a privacy violation. It appears that components of the Bill are specifically designed to generate significant difficulty for researchers to the point where research becomes completely non-viable. This would prevent researchers from performing studies that are essential to maintain the high-quality research needed to maintain international competitiveness and to implement international discoveries into the Australian health and medical system. Animal rights extremists in the recent past have made all researchers and their families potential targets of threats or specific acts of vandalism.

## **Establishment of a potentially dictatorial Authority**

The powers of the 'Authority' set up by in "Paragraph 99 Matters of responsibility" can be seen as dictatorial. They imply a capricious and non-transparent process for decision making. The licensing procedure involving the 'Authority' in final approval for all research (government and non-government) would appear to rule out any consideration of ethics and personal responsibility and replace it with top-down edict. Nearly all issues in "Paragraph 99 Matters of responsibility" are currently covered by existing legislative requirements in each State and Territory. The requirements are an unnecessary duplication for little animal welfare gain.

The proposal to establish data banks in "Paragraph 100 Data bank" are already covered by the Animal Welfare Bureaus (and equivalents) in each State and through the NHMRC statements of compliance. AECs across the country have this information and report to the AWC as appropriate. The requirement to establish a data bank for studies using animals and another of alternatives to animal use conducted overseas is unrealistic and unworkable.

## **Evaluation and licensing of individual projects**

It is important the National Welfare Authority should not be engaged in the evaluation and licensing of individual projects. This will incur an enormous operational workload for the Authority considering the Australian-wide number of Institutional ACECs. There is a strong likelihood that this will lead to significant impact on the time taken for evaluation (which could impede worthy and urgent biomedical research) and the commitment of precious management resources to fulfil the licensing formality. The Authority should take a more productive advisory and regulatory role by focusing on a broader perspective on the assurance of the performance of the research organizations in meeting

the standard of animal welfare and humane use of laboratory animals. Such a role is already being performed by the NH&MRC for example.

### **Establishment of an inspectorate**

As it stands, the National Animal Welfare Bill emphasises the establishment of an inspectorate. Does this rule out quality management processes and other methods for enlisting personal commitment and responsibility? This entails a major burden that duplicates existing systems.

"101 Licenses:" Inspection of facilities is a state and territory issue and is conducted as a condition of licensing.

### **Omissions**

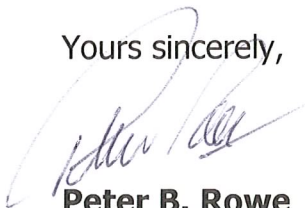
A major concern is that there is no mention of the use of animals in education and teaching. The *Australian code of practice for the care and use of animals for scientific purposes* refers to 'animals for scientific purposes' which covers education and teaching. Is there an assumption that animals will no longer be used for education and teaching?

The definition for "animal" is contradictory within the Bill. The definition of an animal appears to differ between Schedule 2, in which it is considered to be a vertebrate and some other forms of animal and Part 8, section 96, in which it is considered to be an invertebrate or vertebrate. The inclusion of invertebrates would greatly expand the workload of Animal Ethics Committees, without necessarily protecting any species with high levels of cognition.

The definitions for "pain" and "research" are completely inadequate (Part 8, 96 Definitions). Why has the definition of **pain** in the *Australian code of practice for the care and use of animals for scientific purposes* been abandoned in favour of a weak definition divorced from any scientific view of the phenomenon of pain? This is not a trivial issue. Pain relief cannot be put in place if pain and its causes are not properly understood. The word 'sensation' is used in the Bill's definition of pain, but has a specific meaning in science that does not extend to its psychological aspects.

Some definitions of terms are completely absent (for example distress), and others are unfamiliar eg. research unit and supply unit.

Yours sincerely,



**Peter B. Rowe**

Lorimer Dods Professor and Director

*For and on behalf of*

**Roger Reddel**

*Senior Principal Research Fellow  
Unit Head, Cancer Research Unit*

**Patrick Tam**

*Senior Principal Research Fellow  
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**Ian Alexander**

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