



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

Dear Sir / Madam

**Submission: National Animal Welfare Bill**

The Animal Welfare Committee (AWC) of the National Health and Medical Research Council (NHMRC) appreciates the opportunity to comment on the National Animal Welfare Bill. Their submission, which includes comments from researchers who use animals for scientific purposes, is attached.

The AWC provides advice on all matters relating to the conduct and ethics of the use of animals for scientific purposes and has the following Terms of Reference:

1. To advise the Research Committee of NHMRC on all matters pertaining to the conduct and ethics of the use of animals for scientific purposes.
2. To be responsible to NHMRC, through the Research Committee, for the regular review and, if necessary, revision of the *Australian code of practice for the care and use of animals for scientific purposes* (the *Code*), and other NHMRC documents related to animal welfare.
3. With the approval of Council, to develop and implement ways of ensuring that the use of animals for scientific purposes that is funded by NHMRC is in accord with the current *Code*. This outcome is to be achieved through periodic audit of Animal Ethics Committees and recommendation to Research Committee of action in relation to compliance with the *Code* to ensure there is consistency in operation between Animal Ethics Committees.
4. In consultation with Research Committee to undertake activities that assists Animal Ethics Committees in interpretation of the *Code*.

Yours sincerely

Mrs Elizabeth Grant AM, Hon LLD, Monash  
Chairman  
Animal Welfare Committee  
30 November 2005

## *AWC submission on the National Animal Welfare Bill*

### *General comments*

The National Animal Welfare Bill has two critical flaws that threaten the delivery of good animal welfare in Australia, if the Bill were to become law. In general, the Bill appears to have been put together without reference to the range of structures in place that deal with animal welfare in Australia and the evolutionary improvement that has taken place and will continue to - if allowed. Schedule 1 of the draft Bill illustrates this point.

#### **Critical flaw 1**

The Bill does not appear to grow out of the notion 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-going command-and-control approach to an area that requires a combination of personal responsibility and motivation to do good and sufficient knowledge of animals that allows for good actions. Good intentions without competencies do not guarantee considerate animal care.

To clarify, 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. It has limitations, however, when it comes to ignorance. The law cannot by itself educate the heart, mind and hands to improve the lot of animals. A National Animal Welfare Bill alone cannot create good public policy. In all likelihood the one-dimensional approach it seems to entail will be regressive.

#### **Critical flaw 2**

The Bill does not set a context by acknowledging unequivocally that people have a close association with animals and that people use animals in agriculture, as companions and in sport and entertainment. By being silent on the fact that animals satisfy a range of human needs and will continue to do so, the Bill sets the scene for progressive restrictions on the use of animals rather than progressive improvement to the way in which animals are treated and used.

#### **Other general issues**

Some other general issues include mistaken assumptions about the nature of codes of practice for animals in Australia, no mention of animal welfare standards and an emphasis on inspectorates to deliver results.

An understanding about the role of codes of practice in animal welfare has evolved in Australia since the first code for animals for scientific purposes was developed in 1969 and the first model codes for farm animals in 1983. In Australia in 2005, codes of practice can be defined as guides that provide information on responsibilities. A code includes both 'musts' and 'shoulds' as well as 'mays' and 'shalls'. The verbs 'should' and 'may' do not reflect concept ideas that are amenable to legislation. In contrast, standards are measurable and auditable specifications related to housing, transport and so on of animals. Standards can be incorporated into legislation.

The system of public policy instruments that can apply to animal welfare are at the core of the Australian Animal Welfare Strategy. These instruments go from legislation to codes of practice, industry self-regulation, quality assurance and finally to best practice. Will the National Animal Welfare Bill threaten this strategy?

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?

### *General comments on Part 8 - Animals used for experimental purposes*

The *Australian code of practice for the care and use of animals for scientific purposes* (the *Code*) whilst published by the National Health and Medical Research Council (NHMRC) document is not a NHMRC document. 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-Chancellor's Committee in conjunction with the NHMRC.

Contrary to the statement in the second reading of the Bill in June 2005, the *Code* is not voluntary. It is incorporated into each State and Territories animal welfare legislation (or its equivalent) and has sanctions by law. It appears that the Commonwealth is taking over the State's regulatory functions to become the 'Authority'. It is unlikely that the States and Territories would concede the powers they already have, in which case there will be another layer of regulation that is not always consistent with State and Territory legislation. This will inevitably lead to conflict between the jurisdictions for, in the case of animals used for scientific purposes, little benefit. This is one area where the system works well with the *Code* 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.

The NHMRC can also impose sanctions on institutions in receipt of NHMRC funding if they, their researchers or the AEC breach the *Code*.

### *Specific comments on Part 8 - Animals used for experimental purposes*

#### **96 Definitions**

The definitions for pain and research are inadequate, the definition for animal is conflicting within the Bill, some definitions of terms are absent (for example distress), and others are unfamiliar eg research unit and supply unit.

Why has the definition of **pain** in the *Australian code of practice for the care and use of animals for scientific purposes* [*Pain: an unpleasant sensory and emotional experience associated with actual or potential tissue damage. It may elicit protective actions, result in learned avoidance and distress and may modify species-specific traits of animal behaviour, including social behaviour*] been passed over in favour of a definition that is divorced from the current scientific view of the phenomenon of pain? This is no trivial matter. If pain and its

causes are not properly understood then pain relief cannot be put in place. The word 'sensation' (used in the Bill's definition of **pain**) has a specific meaning in science that does not extend to its psychological aspects. In 2005, animal welfare refers to both pain and distress. Why is distress not defined?

The definition of **research** would seem to suggest that many studies involving animals would not come under the scope of the National Animal Welfare 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. Both definitions differ from the one in the Code which says '*Animal: any live non-human vertebrate, that is fish, amphibians, reptiles, birds and mammals, encompassing domestic animals, purpose-bred animals, livestock, wildlife and also cephalopods such as octopus and squid.*' The inclusion of invertebrates would greatly expand the workload of Animal Ethics Committees, without necessarily protecting any species with high levels of cognition.

### **Paragraph 98 Offence to conduct research with animals other than in accordance with code of practice**

The concern here is the failure to highlight that the *Australian code of practice for the care and use of animals for scientific purposes* (the *Code*) sets out a process for ethical decision making. Paragraph 98 should be explicit on this matter. It is important to recognise that ethics is about good and bad and right and wrong. The benefits of experiments with animals can be 'good' and 'right'. Impacts on animals can be 'bad' and 'wrong'. Unless the process of ethical decision making is highlighted, the National Animal Welfare Bills points to a regressive command-and-control approach to the use of animal for scientific purposes where ethics is not considered.

Another major concern is that the use of animals in education and teaching is not mentioned at all. The *Code* refers to '*animals for scientific purposes*' which covers education and teaching. Is there a tacit assumption that animals will no longer be used for education and teaching or is this an oversight?

### **Paragraph 99 Matters of responsibility**

Nearly all issues in section 99 are presently covered by existing legislative requirements in each State and Territory. The requirements are an unnecessary duplication for little animal welfare gain.

The powers of the 'Authority' set up by the draft Bill can be seen as overly authoritative. 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.

**99 (1) (d)** The 'Authority' mirrors the Animal Welfare Bureaus equivalents in each State and Territory that issues licences to institutions, or researchers or both. Licences for research projects funded by the Commonwealth are issued by the relevant State or Territory where the research is conducted. If research spans more than one State or Territory multiple licences are required.

**99 (1) (f) (viii)** Animal reports on the number of animals used and bred are required by State legislation. The NHMRC collects limited statistics on specific animal use on their annual Statement of Compliance (with the *Code*). The statements are submitted by all institutions that use animals for research and teaching and are in receipt of NHMRC funding.

**99 (1) (i)** Commercial use is monitored by an Animal Ethics Committee and research must comply with the *Code* and State and Territory legislation.

For approval to be given to conduct any human clinical trial in Australia, the Therapeutic Goods Administration (TGA) will require certain assurances about product safety, and in many cases that will require animals. The TGA is also fixed with the responsibility to ensure the safety of drugs and treatments used in humans in Australia. To do that it must accept data generated overseas, or it may require some additional testing if there are gaps in the data as presented.

The refinement of safety testing techniques is an ongoing important process, to improve the number and welfare of animals used without compromising the quality of reassurance about safety that the public wants or deserves.

**99 (1) (j)** NHMRC's Animal Welfare Committee provides advice to the Minister of Health and Ageing through the National Health and Medical Research Council.

**99 (1) (l)** Cruelty to animals is specifically banned in the *Code* and would not be allowed by any AEC. Good animal welfare is essential to good science and it is disappointing that a National Bill uses such a subjective term.

### **Paragraph 100 Data bank**

The proposal to establish data banks are covered by the Animal Welfare Bureaus (and equivalents) in each State and through the NHMRC statements of compliance (for NHMRC funded institutions that use animals for scientific purposes). AECs across the county have this information and report to the NHMRC's 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.

### **101 Licenses**

See the comments at 99 (1) (d). Inspection of facilities is a state and territory issue and is conducted as a condition of licensing.

### **Paragraph 114 Inspection of register**

The requirement for the public disclosure of the names of all persons to be licensed to use animals for research purposes creates an opportunity for abuse of this information by extremist that oppose all forms of animal research (whether ethical or not). Additionally there appears to be components of the proposed Bill designed to generate sufficient difficulty for researchers that it becomes unviable to perform studies that are essential to maintain the high-quality research that is required of Australian medical researchers to maintain their international competitiveness and benefit the Australian public.

This Bill has the potential to seriously curtail, if not halt, medical research in Australia. Who will do the research necessary to reduce the burden of disease including cancer, diabetes, heart disease, Alzheimer's, Parkinson's, multiple sclerosis etc?

Research involving animals also benefits the health of animals eg antibiotics and vaccines for use in domestic animals such as: distemper, parvovirus and hepatitis in dogs; influenza, enteritis and leukaemia in cats, and tetanus in horses and sheep.

### *Conclusions*

The following questions apply to whether or not the National Animal Welfare Bill should be accepted. None have an affirmative answer. Is such a Bill required? What are the animal welfare issues that are not adequately covered at the moment? Specifically, are there glaring defects in the public policy that applies to the use of animals for scientific purposes? Will they be rectified by the Bill?

In its current form, the National Animal Welfare Bill is critically flawed. It threatens the delivery of good animal welfare and the ethical processes involved in the use of animals for scientific purposes that are currently in place in Australia. It will also impact negatively on the ability of researchers to conduct research that is beneficial for the health of all Australians. In view of some major disease risks, this is unsafe and unacceptable.