



2 paddington st, paddington nsw 2021 australia
t +612 9357 0703 f +612 9357 0711
info@voiceless.org.au www.voiceless.org.au
ACN 108 494 631

30 September 2005

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

Dear Committee Members,

Submission on the National Animal Welfare Bill 2005

I am writing to introduce Voiceless and to make a submission on the *National Animal Welfare Bill 2005*.

Voiceless is a non-profit organisation for animals in Australia. Our mission is to promote respect and compassion for animals, increase awareness of the conditions in which they live and take action to protect animals from suffering. J.M. Coetzee (Nobel Prize for Literature Winner 2003 and author of 'Lives of Animals and Elizabeth Costello') is my co-patron and Australian actor Hugo Weaving (Matrix, Lord of the Rings) is our Ambassador.

As our first initiative, Voiceless launched a national grants program, the largest of its kind in the country - to support projects that help animals. The grants were funded primarily by the Sherman family. During 2004, our inaugural year, we received more than 100 outstanding applications and awarded more than \$140,000 to a range of non-profit organisations, schools, universities and local councils. Grants were given to a wide variety of projects ranging from campaigns against factory farming practices to the publishing of the first Australian animal welfare textbook for use in universities. Further information about Voiceless and the grants program can be found at www.voiceless.org.au

Our 2005 grants program is presently in progress and based on the overwhelming number of applications received, we are expecting our grants program to have even greater and more far-reaching effects this year.

Voiceless has also established a legal arm, which is carrying out a number of activities directed towards reduced animal suffering, including facilitating law reform. I have **attached** our submission on the *National Animal Welfare Bill 2005* which I understand is the subject of a current inquiry by the Committee. I hope that you will consider the submission favourably, as we aim to give animals a much needed voice in the legal process. The submission represents our position in relation to the legislation described only and should of course not be used as a substitute for legal advice.

Consistently with other Bills that have come before Parliament for consideration, the National Animal Welfare Bill raises controversial economic and ethical issues which will no doubt lead to significant debate.

I hope that after you have reviewed our submission, you will be willing to help us to give animals a voice in the democratic parliamentary process. After all, if the law does not protect animals, they have only the mercy and compassion of each individual to rely upon.

If the Committee or any of its members would like to meet the Voiceless team to discuss any aspect of our Submission, please do not hesitate to contact Katrina Sharman on (02) 9357 0713 or by e.mail at ksharman@voiceless.org.au

Finally, Voiceless has no objection to our Submission being made public; however we would be grateful if you could advise us when the Submission has been placed on the Committee's website.

Thank you for giving us this opportunity to be a voice for the voiceless.

Yours sincerely,



Brian Sherman AM
Director

Copy: Ondine Sherman, Director, Voiceless
Katrina Sharman, Corporate Counsel, Voiceless



A SUBMISSION BY VOICELESS ON THE NATIONAL ANIMAL WELFARE BILL 2005

September 2005

Disclaimer: Voiceless Limited ACN 108 494 631 ('Voiceless') is a company limited by guarantee. Voiceless is not a legal practice and does not give legal advice to individuals or organisations. While Voiceless makes every effort to ensure the accuracy of information presented on its behalf, Voiceless does not guarantee the accuracy or completeness of that information. Information is provided by Voiceless as general information only and any use of or reliance on it should only be undertaken on a strictly voluntary basis after an independent review by a qualified legal practitioner (or other expert). Voiceless is not responsible for, and disclaims all liability for, any loss or damage arising out of the use of or reliance on information it provides. To learn more about Voiceless, please visit <http://www.voiceless.org.au>

*voiceless envisions a world in which animals are treated with respect and compassion.
voiceless ltd. is a non-profit australian organisation established by the sherman family in 2004.*

ABOUT VOICELESS

Voiceless is a non profit Australian organisation established in 2004 by the Sherman Family. Voiceless' mission is to work to promote respect and compassion for animals, increase awareness of the conditions in which they live and take action to protect animals from suffering.

Its aims are to:

1. give grants to organisations that share its vision;
2. educate Australians and in particular young Australians; and
3. work to modify or create legislation and policies to protect animals.

PATRONS

J.M. COETZEE

Nobel Prize for Literature Winner 2003 and author of 'Lives of Animals' and 'Elizabeth Costello'

BRIAN SHERMAN AM

President of the Board of Trustees of the Australian Museum; Director of Network Ten, Chairman of Sonic Communications Pty Limited and Pulse International Pty Limited and a number of listed investment companies in the USA, Canada and Australia; Former Chairman and Joint Managing Director of the EquitiLink Group; and former board member of the Sydney Organising Committee for the Olympic Games (SOCOG)

AMBASSADOR

HUGO WEAVING, Actor

The Adventures of Priscilla Queen of the Desert, Matrix Trilogy, Lord of the Rings Trilogy

For further information visit <http://www.voiceless.org.au>

All correspondence in relation to this submission should be directed to

Katrina Sharman,
Voiceless
2 Paddington Street, Paddington NSW 2021
Tel: (02) 9357 0713
Fax: (02) 9357 0711
e.mail ksharman@voiceless.org.au

© September 2005

Table of contents		Page
A.	Executive Summary and Recommendations	4
B.	Introduction	6
C.	Background: Is a more consistent and enforceable national framework for animal welfare issues required in Australia?	7
	i. Comments on consistency	7
	ii. Comments on enforcement	12
D.	Voiceless' vision for a more consistent and enforceable national framework for animal protection	15
E.	Comments on various aspects of the National Animal Welfare Bill 2005	16

A. **Executive Summary and Recommendations**

1. The overall effect of the current regulatory framework is to deny many animals meaningful legal protection. In other words, Australia's animal welfare legislation uniformly sanctions legalised cruelty to animals under the veil of 'good animal welfare law'.
2. Regarding the consistency of the current regulatory framework for animal welfare, Voiceless submits that:
 - a. Animals should not lose the protection of an animal protection law simply because they cross a jurisdictional border.
 - b. All animals have an equal right not to suffer and the interest of an animal in being protected should not be contingent on the jurisdiction in which it is located.
 - c. The objectives of Australia's animal welfare legislation should be:
 - i. to prevent acts of cruelty to animals;
 - ii. to promote the well-being of animals and protect them from pain and suffering; and
 - iii. to promote respect and compassion for animals in recognition of the fact that we have a responsibility to them as our fellow creatures and as living sentient beings.
 - d. The 'management' of animals should not form part of the objectives of Australia's animal protection legislation as this reinforces the notion that animals are our property to use for purposes that we deem appropriate and necessary.
 - e. There appear to be a number of shared 'themes' in Australia's animal welfare legislation. These include:
 - i. Animals are our property;
 - ii. Some animals are more equal than others; and
 - iii. Cruelty is only defined as cruelty when convenient.
3. Regarding enforcement of the current regulatory framework for animal welfare, Voiceless submits that:
 - a. A tendency to 'under-enforce' the law currently appears common to all States and Territories.
 - b. The current framework for regulating animal welfare which involves the distribution of enforcement powers between the RSPCA, State and Territory police forces and various Government bodies, has resulted in a number of deficiencies in enforcement which the Committee should explore as part of its current Inquiry.
4. Voiceless considers that the best way to promote consistency across State and Territory legislation would be for State, Territory and Federal Government Ministers to develop a national 'model' for animal protection law. Each State or Territory should in due course adopt the provisions of the model code as their own law, except for those provisions in respect of which a particular State or Territory wishes to exceed the standards of the model law.

5. Each State or Territory should also establish an independent Department of Animal Protection focussed primarily on enforcing the model legislation. The enforcement powers afforded to the Department should be supplementary to the powers currently exercised by the RSPCA and State/Territory police forces. An alternative to establishing a new Government Department might be to establish an Animal Protection Authority or Office of Animal Protection with the powers referred to above as an agency of each State or Territory's Attorney General's Department.
6. Voiceless has not chosen to provide its detailed comments on the Bill but is generally supportive of the comments on content contained in the submission prepared by the *World Society for Protection of Animals* dated June 2005.
7. Voiceless' additional comments on the content of the Bill are:
 - a. In relation to potential offences under the Bill: we submit that current intensive farm industry practices cause pain and suffering to millions of animals in Australia and any genuine attempt to reform our animal welfare legislation must involve detailed consideration of why those practices should be allowed to continue.
 - b. Voiceless supports the development of a regulatory regime for labelling animal products on the basis that current research shows that consumers are increasingly seeking to purchase humanely produced products. It is important that any scheme that is developed includes detailed and enforceable standards for labelling all products derived from or tested on animals.

B. Introduction

1. This submission has been prepared by Voiceless in response to the Senate Rural and Regional Affairs and Transport Committee's Current Inquiry on the *National Animal Welfare Bill 2005*. Voiceless views the Committee's inquiry as a crucial first step toward improving legal protections afforded to animals in Australia. In Voiceless' view, the current regulatory framework for animal protection in Australia suffers from two main deficiencies:
 - a. it has facilitated the development of a complex web of animal welfare acts, regulations and codes of practices. This has resulted in inconsistency in animal welfare standards between Australian States and Territories both in terms of the content of animal welfare laws and in their enforcement; and
 - b. to the extent that our current animal welfare laws can be said to embody common themes, these themes appear to facilitate the ongoing suffering of millions of animals on a daily basis. In other words, most animal welfare laws in Australia:
 - i. sanction differential treatment of species;¹ and
 - ii. condone substantial suffering of animals in certain contexts (particularly with respect to farm and perceived 'pest' animals) thereby effectively legalising cruelty.²
2. Voiceless understands that the Committee's analysis of the Bill will require it to consider two issues, namely:
 - a. whether a more consistent and enforceable national framework for animal welfare issues is required; and
 - b. the adequacy of the Bill.
3. For the purpose of this Submission, Voiceless intends to focus on the first of the above issues. The reason for this is that while Voiceless applauds the Australian Democrats' initiative of seeking higher standards of animal protection on an Australia-wide basis, it believes that the Bill:
 - a. is not sufficiently comprehensive; and
 - b. may face significant political and legal obstacles.
4. The latter part of this Submission sets out Voiceless' proposal for implementing a more consistent and enforceable national framework for animal protection in Australia.

Note: Where legislation is referred to in this submission, the information is provided by way of example only and is not intended to provide an exhaustive summary of legislative provisions applicable in each State or Territory.

¹ Refer to page 7 below.

² Refer to page 8 below.

C. Background: Is a more consistent and enforceable national framework for animal welfare issues required in Australia?

1. In order to answer the question as to whether a more consistent and enforceable national framework for animal welfare issues is required in Australia, one must understand the current regulatory framework for animal protection.
2. In short, the allocation of animal law making powers in Australia is a product of the Australian Constitution. The Constitution does not specifically mention animals (apart from fish)³ and in the absence of an express allocation of power to the Commonwealth, State and Territory Governments have assumed responsibility for enacting and enforcing most animal welfare and anti-cruelty laws. The following is a list of the 'main' animal welfare / anti-cruelty laws in Australia ('**Australia's animal welfare legislation**')

- a. *Animal Welfare Act 1992 (ACT)*
- b. *Animal Welfare Act 1999 (NT)*
- c. *Prevention of Cruelty to Animals Act 1979 (NSW) and Animal Research Act 1985 (NSW)*
- d. *Animal Care & Protection Act 2001 (QLD)*
- e. *Prevention of Cruelty to Animals Act 1985 (SA)*
- f. *Animal Welfare Act 1993 (TAS)*
- g. *Prevention of Cruelty to Animals Act 1986 (VIC)*
- h. *Animal Welfare Act 2002 (WA)*

3. In addition to the State/Territory regulatory regimes, animal welfare is also 'managed' by the Commonwealth, which provides general guidance on a wide range of issues and exercises an important role in relation to agriculture, fisheries and the import and export of wildlife.
4. Comments on consistency
 - a. Generally speaking, while there are many common themes in Australia's animal welfare legislation, an examination of the minutiae of the laws of each State and Territory reveals a notable lack of uniformity. While Voiceless would welcome the opportunity to provide a comprehensive submission on these discrepancies, for the purpose of this submission we have highlighted three areas of inconsistency:

i. Definition of an Animal:

1. Most statutes define an 'animal' as a live member of a vertebrate species including any amphibian, reptile, bird, fish (in certain circumstances) and mammal (but not a human). The Australian Capital Territory, New South Wales, Victoria, Queensland and the Northern Territory include crustaceans in defined circumstances.⁴ The Australian Capital Territory

³ Section 51(xxv) of the Constitution allocates certain powers to the Commonwealth to regulate fisheries in Australasian waters, although the Commonwealth, States and Territories have adopted a cooperative approach to jurisdiction and supervision over marine fisheries for the past century. See: 'The Development of Australian Fisheries Management' [16 June 2005] <http://members.trump.net.au/ahvem/Fisheries/National/Dev_AFM3.html#Jurisdiction>; Katrina Sharman, 'Animal Law in Australia' (2004) *Animal Legal & Historical Web Center* <<http://www.animallaw.info/nonus/articles/ovaustralia.htm>> [29 September 2005]

⁴ *Animal Welfare Act 1992 (ACT)* s 2; *Prevention of Cruelty to Animals Act 1979 (NSW)* s 4; *Prevention of Cruelty to Animals Act 1986 (VIC)* s 3; *Animal Care And Protection Act 2001 (QLD)* s 11; *Animal Welfare Act 1999 (NT)* s 4.

and Queensland also include cephalopods (octopus and squid) in certain circumstances.⁵ The Queensland Act even includes a live pre-natal or pre-hatched creature if it is in the last half of gestation or development but does not include the eggs, spat or spawn of fish.⁶ South Australia and Western Australia do not include fish in their definition of an animal.⁷

2. The practical effect for animals of the difference in definition is that they receive varying levels of protection depending on the State or Territory which they inhabit.
3. Voiceless submits that animals should not lose the protection of an animal protection law simply because they cross a jurisdictional border.

ii. Definition of 'Cruelty':

1. In relation to the definition of 'cruelty', all States and Territories arguably prohibit the infliction of unnecessary pain on an animal or the failure to take steps to alleviate pain being experienced by an animal, subject to specific exceptions. New South Wales, Western Australia, Queensland, Tasmania and Victoria use words such as *'beating, mutilating, kicking, wounding, terrifying, torturing, abusing and overworking an animal'* in their definitions of cruelty.⁸ Some States, such as New South Wales, Victoria and Tasmania have created offences for acts of aggravated cruelty, which are defined as *'acts resulting in the death, deformity or serious disablement of an animal.'*⁹
2. In addition to the general anti-cruelty provisions, some anti-cruelty statutes create specific offences of cruelty, including confining an animal or failing to provide adequate or appropriate exercise, exposing an animal to excessive heat or excessive cold, failing to provide adequate veterinary treatment, neglecting an animal so as to cause it pain, tethering an animal for an unreasonable length of time and failing to provide an animal with proper food, drink, or shelter.¹⁰ The Queensland and Tasmanian statutes go one step further and proactively impose a positive duty of care on persons in charge of the animal.¹¹
3. The practical effect of Australia's animal welfare legislation not adopting a uniform definition of cruelty is threefold, namely:
 - a. an act that constitutes a clear offence in one State or Territory, (for example, pig tethering,) may be freely carried out in another jurisdiction;

⁵ *Animal Welfare Act 1992* (ACT), s 2; *Animal Care And Protection Act 2001* (QLD) s 11.

⁶ *Animal Care And Protection Act 2001* (QLD), sections 11(1)(b) and (3).

⁷ *Prevention of Cruelty to Animals Act 1985* (SA) s 3; *Animal Welfare Act 2002* (WA) s 5.

⁸ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4(2); *Animal Welfare Act 2002* (WA), s 19; *Animal Care And Protection Act 2001* (QLD), s 18; *Animal Welfare Act 1993* (TAS) s 8; *Prevention of Cruelty to Animals Act 1986* (VIC) s 9.

⁹ *Prevention of Cruelty to Animals Act 1979* (NSW) s 6; *Prevention of Cruelty to Animals Act 1986* (VIC) s 10; *Animal Welfare Act 1993* (TAS) s 9.

¹⁰ *Prevention of Cruelty to Animals Act 1979* (NSW) Sections 4-5, *Animal Care And Protection Act 2001* (Qld) Sect 18, *Animal Welfare Act* (NT) Sections 6-8.

¹¹ *Animal Care and Protection Act 2001* (QLD) s 17; *Animal Welfare Act 1993* (TAS) s 6.

- b. individuals and organisations in some States, (such as those that have enacted duties of care), are encouraged to be more proactive about promoting animal protection;
 - c. animals in States and Territories with broad and wide-ranging definitions of cruelty will have the benefit of more meaningful legal protections than those in other jurisdictions.
 - 4. Given that much of Australia's animal welfare legislation was enacted to prevent morally/ethically objectionable treatment of animals, it is unacceptable that there is no nationally agreed standard of what constitutes cruelty.
 - 5. In Voiceless' submission, all animals have an equal right not to suffer and the interest of an animal in being protected should not be contingent on the jurisdiction in which it is located.
- b. Objectives of State and Territory animal welfare/anti-cruelty laws
 - i. Insofar as the prevention of cruelty is concerned, the objectives of Australia's animal welfare legislation are, broadly speaking, consistent. The New South Wales, Victorian, Tasmanian and Northern Territory Acts expressly state that one of the Act's objectives is 'to prevent cruelty to animals'.¹² The South Australian Act does not expressly state that this is an objective; however this may be implied from its title.¹³ One point of difference is that both Western Australian and Queensland include 'management' or 'educational aims' in their list of objectives.¹⁴
 - ii. Voiceless submits that the objectives of Australia's animal welfare legislation should be:
 - 1. to prevent acts of cruelty to animals;
 - 2. to promote the well-being of animals and protect them from pain and suffering; and
 - 3. to promote respect and compassion for animals in recognition of the fact that we have a responsibility to them as our fellow creatures and as living, sentient beings.
 - iii. We consider that 'management' of animals should not form part of the objectives of Australia's animal protection legislation as this reinforces the notion that animals are our property to use for purposes that we deem 'appropriate' and 'necessary'.
- 5. Despite the many inconsistencies in Australia's animal welfare legislation, it is possible to identify a number of shared 'themes' in State and Territory animal welfare laws. Briefly Stated, these are:

¹² *Prevention of Cruelty to Animals Act 1979* (NSW) s 3; *Prevention of Cruelty to Animals Act 1986* (VIC) s 1; *Animal Welfare Act 1993* (TAS) s 8; *Animal Welfare Act 1999* (NT) s 3(b).

¹³ *Prevention of Cruelty to Animals Act 1985* (SA).

¹⁴ *Animal Welfare Act 2002* (WA) Section 3(2)(b); *Animal Care And Protection Act 2001* (QLD), section 3(b)(i).

a. Animals are our property

- i. While Australia's animal welfare laws have improved the lives of many animals, its potential to provide true protection is limited because it embraces the age old fiction that animals are property. The effect of being someone's property is that animals' existence as living, sentient beings capable of pain and suffering has been legally 'denied'. In legislation, they have become mere 'legal things' with no rights at all.¹⁵
- ii. While Australia's animal welfare laws convey certain protections upon certain animals, others are classified as 'stock' (livestock)¹⁶ or things to be 'disposed of'¹⁷. Enshrining this terminology in legislation has denied meaningful legal protections (such as the right to freedom of movement and freedom from pain and injury) to those animals who are unfortunate enough to fall within particular classifications.

b. All animals are not equal

- i. Despite the fact that the broad objective of Australia's animal welfare legislation is to prevent cruelty to animals, the benefits of all our laws are tempered by the notion that some animals are more equal than others.
- ii. For example, in NSW certain protective provisions are modified when applied to stock animals, such as cattle, sheep, goats, swine, poultry, deer and horses.¹⁸ These modifications, which take the form of 'exemptions to the cruelty provisions' or defences to acts of cruelty, sanction the confinement of certain animals without exercise and the carrying out of mutilations such as mulesing, castration and tail docking in certain contexts, without pain relief.¹⁹ These same acts would constitute offences if they were carried out on our companion animals.²⁰ Similar provisions exist in other States and Territories.²¹
- iii. In addition to the exemptions and defences that sanction differential treatment of stock animals, all animal welfare laws in Australia are underpinned by model codes of practice.²² Whilst these Codes were developed in an attempt to promote consistency in Australia's animal welfare legislation and to act as a guide to minimum animal welfare

¹⁵ For a discussion of being '*trapped in a universe that no longer exists*', see: Steven Wise, *Rattling the Cage: Towards legal rights for animals* (Perseus Books) 2000, p9. See also: Gary Francione, 'Animals Rights & Animal Welfare', 48 *Rutgers L Rev* 397 (1996)

¹⁶ For example, see *Prevention of Cruelty to Animals Act 1979* (NSW) s 4; *Animal Welfare Act 1999* (NT) s 4.

¹⁷ For example, see *Animal Welfare Act 1999* (NT) s 76(2).

¹⁸ *Prevention of Cruelty to Animals Act 1979* (NSW) s 4; *Prevention of Cruelty to Animals (General) Regulation 1996* (NSW, cl 8 prescribes 'deer' as a stock animal.

¹⁹ For example, see: *Prevention of Cruelty to Animals Act 1979* (NSW) ss 9 and 24.

²⁰ For example, see: *Prevention of Cruelty to Animals Act 1979* (NSW) ss 5 and 12 (2A).

²¹ For example, see: *Prevention of Cruelty to Animals Act 1986* (VIC) s 6; *Animal Welfare Act 1993* (TAS) ss 7 and 50(4); *Animal Welfare Act 1999* (NT) ss 8, 11 and 21.

²² Examples of these Codes include the Model Codes of Practice for; the Welfare of Animals at Saleyards; Cattle; Domestic Poultry; Farmed Buffalo; Farming of Ostriches; Feral Livestock Animals; Husbandry of Captive Bred Emus; Intensive Husbandry of Rabbits; Land Transport of Cattle; Land Transport of Pigs; Land Transport of Poultry; Land Transport of Horses; Livestock at Slaughtering Establishments; Pigs; The Camel; The Farming of Deer; The Goat; and The Sheep. These Codes are not incorporated in every State and Territory animal welfare law, nor is the preceding list intended to be exhaustive. See: Primary Industries Report Series <http://www.publish.csiro.au/nid/22/sid/11.htm> [29 September 2005]

standards, their ability to provide meaningful protection is limited by the fact that:

1. their legal status and effectiveness varies in each State and Territory;
 2. they clearly legitimise numerous intensive farming methods as many State and Territory Laws enable them to be used as a complete shield by animal industries to defend practices such as mulesing, debeaking and forced moulting which would constitute acts of cruelty if they were carried out on those other than stock animals;²³ and
 3. while they are said to be the product of 'extensive consultation with Australian State/Territory Government agencies as well as with industry and animal welfare groups',²⁴ their actual effect is to sanction and entrench current intensive farming practices as opposed to compelling animal industries to focus on animal protection and reduce the pain and suffering of animals.
- iv. Stock animals are not the only animals that fair poorly under Australia's animal welfare legislation. Most animal welfare laws also contain defences for those who wish to hunt, shoot and trap animals provided that no 'unnecessary pain' is caused during the process.²⁵ Whilst these provisions are generally justified by Governments in the name of 'vertebrate pest control'²⁶, it is clear that they can also be used to facilitate the continuation of blood sports carried out for the purposes of entertainment on a nationwide basis.²⁷

c. Cruelty is only defined as cruelty when convenient

- i. A further common feature of Australia's animal welfare legislation is the malleability of the definition of 'cruelty'. For example, as discussed at paragraph C.5 (b)(iv) above, a requirement which exculpates all those who would be conducting acts of cruelty in the circumstances discussed, is that the animal did not experience any 'unnecessary pain'. The effect of including this phrase in State and Territory welfare legislation is to withdraw, almost entirely for some animals, the protection of the legislation. In other words, for certain species, all but wanton acts of cruelty will be tolerated.

²³ Agricultural Resource Management Council of Australia and New Zealand *Model Code of Practice for the Welfare of Animals: Sheep*, 2001, para 9.5; Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, version 4, SCARM Report No 83, 2001, paras 9.5 and 13.2. For example, see *Animal Welfare Act 2002* (WA), s 25.

²⁴ Primary Industries Ministerial Council, 'Reports, National Standards, Codes of Practice', Primary Industries Ministerial Council website < <http://www.mincos.gov.au/publications.htm> > [29 September 2005]

²⁵ *Prevention of Cruelty to Animals Act 1979* (NSW) s 24; *Animal Care And Protection Act 2001* (QLD), s 18(2); *Prevention of Cruelty to Animals Act 1986* (VIC) ss 9(1) and 36; *Animal Welfare Act 1992* (ACT) s 8(1); *Animal Welfare Act 1999* (NT) s 6; *Prevention of Cruelty to Animals Act 1985* (SA) s 13(2); *Animal Welfare Act 2002* (WA) s 19. The Tasmanian Acts refers to 'unreasonable or unjustifiable' pain. See: *Animal Welfare Act 1993* (Tas) ss 7 and 8. Note this list is not intended to be exhaustive.

²⁶ For example, see the Second Reading Speech, *Prevention of Cruelty to Animal Amendment Bill 2004* (NSW) Legislative Council Hansard, 6 May 2005. < <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LC20050506033> >

²⁷ For example, see: *Bacon Busters: Pig Hunting Guide*, Yarra Publishing Group, Surry Hills, January-March 2005.

- ii. For the avoidance of doubt, the following is an example of activities towards animals which are regularly carried out in Australia by animal industries and in rural contexts. Presumably, these fall within the legal definition of 'necessary suffering':
 1. the keeping of pregnant female pigs in sow stalls, in circumstances where they cannot take one step forward or back;²⁸
 2. the keeping of battery hens in cages so small they can barely flap their wings, standing on wire, with less than an A4 size piece of paper in which to move;²⁹
 3. the tail docking of a range of farm animals without anaesthetic;³⁰ and
 4. the use of dogs to hunt and kill perceived 'feral' animals such as wild pigs.³¹
- iii. In the event that a potential offender of Australia's animal welfare legislation cannot rely on an 'unnecessary pain' clause to defend his/her or its action, certain States' and Territories' animal welfare laws provide that it is a defence if the offender acted reasonably or justifiably.³² The presence of defences such as these render the protections afforded by the legislation to some animals virtually meaningless.
- iv. Voiceless submits that the themes discussed above indicate that while there are certain consistencies in Australia's animal welfare legislation, the overall effect of the current regulatory framework is to deny many animals meaningful legal protection. In other words, Australia's animal welfare legislation uniformly sanctions legalised cruelty to animals under the veil of 'good animal welfare law'.

6. Comments on enforcement

- a. As Australia's animal welfare legislation is enacted by State and Territory Governments, power to enforce the statutes is generally granted to officers of State/Territory Government departments, State/Territory branches of the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and members of each State or Territory police force.

²⁸ Approximately 26% of sows are housed in stalls in Australia for most of their reproductive cycles and up to 62% may be in stalls for a part of their reproductive cycle. See: Animal Welfare Science Centre & Department of Primary Industries, Pigs: Welfare Audit for the Pork Industry, A reference document for industry quality assurance programs, April 2004 < <http://www.apl.au.com/media/Pork%20Industry%20Welfare%20Audit.pdf> >. Under the *Model Code of Practice Pigs*, sow crates are permitted to be 0.6m x 2.0m. See: Standing Committee on Agriculture and Resource Management, *Australian Model Code of Practice for the Welfare of Animals – Pigs (2nd edition, 1998)*, SCARM Report No. 66, CSIRO Publishing, Appendix 2.

²⁹ At any one time, there appear to be more than ten million hens in the battery hen system in Australia. For example, see Australian Egg Corporation Limited, *Australian Egg Industry Annual Statistical Publication 2003*, (Australian Egg Corporation Limited), 2004, p48. See also: Primary Industries Standing Committee, *Model Code of Practice for the Welfare of Animals: Domestic Poultry*, version 4, SCARM Report No 83, 2001, Appendix 2.

³⁰ For example, see *Prevention of Cruelty to Animals Act 1979* (NSW) ss 12(2) and 24.

³¹ For example, see *Game & Feral Animal Control Act 2002* (NSW) s 4 and *Prevention of Cruelty to Animals Act 1979* (NSW) s 24; Game Council NSW, *Game Council NSW Code of Practice*, clause 8 < <http://www.gamecouncil.nsw.gov.au/portal.asp?p=CodePractice> >

³² For example, see *Animal Care And Protection Act 2001* (QLD), s 18(2); 18(2)(h); *Animal Welfare Act 1992* (ACT) ss 7-8.

- b. An analysis of the enforcement of Australia's animal welfare legislation is a lengthy exercise, which is beyond the scope of this submission. However for the purpose of this submission, Voiceless submits that a tendency to 'under-enforce' the law is characteristic of all States and Territories. Our main concerns with the present enforcement bodies are outlined below.

i. RSPCA

1. The bulk of prosecutions under Australia's animal welfare legislation are instituted by RSPCA officers, as opposed to State or Territory police forces.³³ However as the RSPCA is a charitable organisation which receives limited Government funding, its ability to enforce anti-cruelty statutes is limited by strict budgetary constraints.
2. In his second reading speech for the Bill, Senator Andrew Bartlett asserted that there are approximately 75 full-time and 75 honorary or part-time inspectors Australia-wide.³⁴ Voiceless agrees with Senator Bartlett's assertion that *'this number is absolutely inadequate considering Australia's extraordinarily high number of domestic animals and production livestock'*. For example:
 - a. in 2002, there were at least 29 million companion animals in Australia;³⁵ and
 - b. in 2003-04 there were more than 541 million 'production livestock', including cattle, pigs, broiler (meat) chickens and sheep in Australia.³⁶
3. The current system of enforcement clearly places an unreasonable burden on the RSPCA, which is forced to balance its enforcement budget and political considerations against other important functions aimed at reducing the suffering of animals, including the momentous task of providing ongoing shelter for animals and veterinary care. The effect of this balancing process means that only the 'worst' cases of cruelty can be prosecuted.

ii. State and Territory Police Forces

1. Voiceless acknowledges that State and Territory police forces share the animal welfare law enforcement burden; however this requires police to prioritise animal cruelty crimes over crimes involving human victims. As pointed out above, animals are classified under Australia's animal welfare legislation as mere property. It therefore seems reasonable to assume that when resources are limited, enforcement of animal welfare legislation will be considered an issue of lesser priority.

³³ Senator Bartlett, National Animal Welfare Bill, Second Reading Speech, The Senate Hansard, 20 June 2005.

³⁴ Senator Andrew Bartlett, Second Reading Speech, *National Animal Welfare Bill 2003*, 12 August 2003, p5. <<http://www.andrewbartlett.com/NewsSpeeches.htm#Augspeeches>>

³⁵ PetNet, 'Pet Ownership in Statistics in Australia – the Facts & Figures' (2002), <<http://www.petnet.com.au/statistics.html>>

³⁶ Australian Government Department of Agriculture Fisheries & Forestry, *Australian Agriculture and Food Sector Stocktake*, (Commonwealth of Australia), March 2005.

2. The above problem may be compounded in rural areas, where animal cruelty incidents are harder to record and quantify. This is due to the logistical difficulties of capturing such incidents in isolated areas. Additionally, local police forces in rural areas are required to balance the need to protect animals such as kangaroos, wild pigs or wild dogs, against the community's perceptions of those animals as 'pests'. When enforcement officers are called upon to carry out such equations, it is fair to assume that most, if not all of the time, the interests of the animal will be subordinated to those of the community.
3. This assumption seems consistent with the finding of a 1988 report on kangaroos by the Senate Select Committee on Animal Welfare:

*'If kangaroos are to be killed in non-commercial areas, there is a responsibility on the Government to ensure that such killing is done with the least possible cruelty. It is not enough for the Government to make arrangements for such killing that are the least expensive to it without adequate provisions to minimise cruelty. A balance has to be reached between practicality and the minimisation of cruelty. The present system is too heavily weighted towards cruelty and, from an animal welfare point of view, needs to be redressed.'*³⁷

iii. Government Departments/Inspectorates

1. While Voiceless recognises that Government departments such as the Department of Primary Industries, investigate and occasionally prosecute for breaches of animal cruelty legislation, there appears to be a serious conflict of interest preventing these bodies from exercising the full weight of the powers granted to them.
2. By way of example, the NSW DPI has as one of its objectives the aim of 'supporting strong economic performance of primary industries'.³⁸ This objective appears to be completely incompatible with protecting the interests of those animals who comprise the 'production units' of primary industry. In other words, there appears to be an inherent conflict of interest in relying upon Government Departments aimed at promoting the growth of industry, to protect the individuals upon which the industry relies for its success.

³⁷ Commonwealth of Australia (1988) *Kangaroos*. Report of the Senate Select Committee on Animal Welfare. Quoted in RSPCA Australia, 'Kangaroo Shooting Code compliance: A Survey of the Extent of Compliance with the Requirements of the Code of Practice for the Humane Shooting of Kangaroos' July 2002 < http://www.deh.gov.au/biodiversity/trade-use/publications/kangaroo-report/welfare.html#_ftn2#_ftn2 >

³⁸ NSW Department of Primary Industries 'About Us/Our Vision' < <http://www.dpi.nsw.gov.au/aboutus/about/overview> > [30 September 2005.

3. On the basis of the examples above, Voiceless submits that the current framework for regulating animal welfare suffers from a number of uniform deficiencies in enforcement which the Committee should explore as part of its current Inquiry.

D. Voiceless' vision for a more consistent and enforceable national framework for animal protection

1. Bearing the constitutional issues discussed at paragraph C.2 above in mind, Voiceless recommends that the best way to promote consistency across State and Territory legislation would be for State, Territory and Federal Government ministers to develop a national 'model' animal protection law.
2. Each State or Territory should in due course adopt the provisions of the model law as their own law, except for those provisions in respect of which a particular State or Territory wished to exceed the standards of the model law. In other words, the model law should include provisions that acknowledge that in circumstances when State or Territory Acts and Regulations provide for superior standards of animal protection, those provisions should prevail.
3. The current model codes of practice should be abandoned and replaced by detailed enforceable 'model' regulations developed consistently with the objectives of the model animal protection law and subject to regular review.
4. The model law should not seek to address those matters which currently fall under Commonwealth jurisdiction such as animal exports and imports. However the Commonwealth should adopt the model legislation insofar as it relates to animals in the care and custody of the Commonwealth, an authority or instrumentality of the Commonwealth or a Commonwealth authority. This would ensure that those animals that are not clearly covered by State or Territory animal protection laws would not be left in legal limbo and would still receive the full benefit of Australia's animal protection legislation.
5. Each State or Territory should establish an independent Department of Animal Protection focussed primarily on giving effect to the content of the model law. The enforcement powers given to the Department should be supplementary to the powers currently exercised by the RSPCA and State/Territory police forces.
6. An alternative to establishing a new Government Department might be to establish an Animal Protection Authority or Office of Animal Protection with the powers referred to above, as an agency of the Attorney General's Department. Voiceless submits that, the Attorney' General's Department would be an appropriate Department to oversee the new authority given its focus on promoting justice, social harmony and the reduction of crime.
7. Voiceless has not sought to provide its recommendations for the contents of a Model Animal Protection Law given that this does not fall directly within the scope of the Committee's present Inquiry. It would however welcome the opportunity to comment on the above proposal in further detail if it was invited to do so.

D. Comments on various components of the National Animal Welfare Bill

1. As outlined at paragraph B.3 above, Voiceless has chosen not to comment on the adequacy of the National Animal Welfare Bill. However we have read the submission prepared by the *World Society for Protection of Animals* dated June 2005 and published by the Committee.³⁹ We agree generally with that organisation's commentary on the Bill insofar as the content of the Bill is concerned. We would however like to comment on the following aspects of the Bill which we feel are commendable and ought to be considered in detail by the Inquiry:

a. Part 4 – Prohibited Conduct and Prohibited Events

- i. Voiceless supports the classification of a number of the acts and activities described in this section as prohibited conduct and prohibited events. However we make the general observation that the list of offences appears unsatisfactory in that it fails to comprehensively protect farm animals.
- ii. For example, while sections 79 and 80 of the Bill prohibit docking tails of cattle and horses and mulesing of sheep, they fail to prohibit docking of tails of pigs, dehorning of cattle, the keeping of pigs in sow stalls and numerous other industry practices which regularly permit millions of animals to suffer. In our submission, current intensive industry practices cause pain and suffering to the greatest number of animals in Australia and any genuine attempt to reform our animal welfare legislation must involve a detailed consideration of why they should be allowed to continue.

b. Part 7 – Labelling of Animal Products

- i. Voiceless supports the development of a regulatory regime for labelling animal products on the basis that consumers are increasingly seeking to purchase humanely produced products.⁴⁰ Awareness about the suffering of animals in intensive/factory farms is steadily increasing and Voiceless considers that while intensive/factory farms continue to operate, it imperative to develop a regulatory framework which will enable consumers to confidently distinguish between 'free range' and 'factory farmed' products.
- ii. Voiceless disagrees with the proposal in the Bill that the new labelling regime be enshrined in a Code of Practice. We submit that any requirements with respect to labelling should form the basis of an Act and an accompanying regulatory scheme. Such a scheme may be developed entirely independently of Australia's animal welfare legislation.

³⁹ Parliament of Australia: Senate, National Animal Welfare Bill 2005, Submissions Received, <http://www.aph.gov.au/senate/committee/rrat_ctte/animal_welfare05/submissions/sublist.htm>

⁴⁰ In a 2001 survey, consumers in Queensland ranked the humane treatment of animals ahead of price when buying meat. See: Smith, A. (Eds) Queenslanders' attitudes towards everyday food items. *Rural Ind. Bus. Serv. Grp. News 2*, 2001 quoted in G.J. Coleman and M. Hay, Consumer Attitudes and Behaviour Relevant to Pork Production, Animal Welfare Centre, Monash University, AAPV Canberra Conference Proceedings 3-6 May 2004. In a recent UK survey, 82% of adults said they would like to see a return to more traditional methods of farming, even if this meant paying more for food. In another UK survey, 80% of adults said they would like to see better welfare conditions for farm animals. See: Phil Macnaghten *Animal Futures: Public Attitudes and Sensibilities towards Animals and Biotechnology in Contemporary Britain Institute for Environment, Philosophy and Public Policy for the Agricultural and Environmental Biotechnology Commission* October 2001.

- iii. For completeness, Voiceless submits that the labelling scheme should not be limited to labelling food products derived from animals but should set appropriate enforceable standards for labelling all products derived from or tested on animals.

Voiceless would be pleased to provide further written or verbal comment on any aspect of this submission if it is invited by the Committee to do so.