

**20th December 2005**

**Submission to:**

**Senate Rural and Regional Affairs and Transport  
Legislation Committee**

**National Animal Welfare Bill 2005**

**by**

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**on behalf of:**

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## A. EXECUTIVE SUMMARY

1. The proposed justification for the NAWB2005, as contained within Senator Barlett's second reading speech, is something of a shotgun exposition on "animal problems" perceived by some people. To use Senator Bartlett's terms, it is a "dog's breakfast" of issues. The problems identified transgress conservation, animal rights, animal liberation, animal welfare, science, enforcement, agriculture and other disciplines. They cut across existing legislation and priorities at Commonwealth, state and territory levels, and facts and assumptions are badly mixed. The idea that all these problems, even if validated, could be solved by the proposed NAWB2005 is unrealistic.
2. In order to assess the merits of the NAWB2005, this submission proposes a basic framework through which animal welfare problems may be able to be defined and separated other related issues. This in turn is used to assess various aspects of the NAWB2005. The critical elements of that basic framework are:
  - a. Society can justify pursuing animal welfare on anthropogenic grounds (benefits to people). It does not require any commitment to biocentric philosophies. Science is and will continue to be the most effective tool in improving animal welfare, so actions aimed at constraining research with animals may have limited utility in advancing animal welfare.
  - b. Animal welfare, animal rights (including animal liberation) and conservation are three independent issues, which are often in conflict. Boundaries need to be placed on each to better understand their role in different contexts
  - c. The core business of animal welfare is the reduction of *unnecessary pain and suffering in captive and wild animals*. It should be objective and scientifically based. It needs to be context-specific and accept that different levels of pain and suffering will exist in different contexts. When assessing the right to exist of specific interactions between people and animals, such as the live

export trade, battery hens or hunting, animal welfare is but one of many variables that society needs to consider. It is not in the interests of society to allow such decisions to be made by one interest group from the narrow perspective of their area of expertise.

- d. Animal rights is a biocentric, largely urban-based concept which questions the rights of people to subjugate animals - wild or domestic. It is not a prerequisite for advancing animal welfare, because animal rights proponents are opposed to the majority of contexts within which animal welfare is advanced.
  - e. Conservation can be defined as *the sum total of actions taken to preserve and maintain items to which we attribute a positive value*. Intrinsic and instrumental (use) values are both highly effective in driving conservation in different contexts. Animal welfare needs to be flexible and adaptive in order to complement rather than constrain conservation action, which in its own right is a priority within the eyes of the public.
3. Senator Bartlett's speech indicates that the primary aim of the proposed legislation is not about solving *animal welfare* problems *per se* but rather about providing a legal mechanism to constrain classes of interaction between animals and people that compromise the rights of the animals concerned. It is thus not surprising that he finds state and territory legislation inadequate, because it is largely restricted to animal welfare when he is clearly after much more
  4. The four main arguments used to justify the NAWB2005 are advantages to and perceived responsibilities of the Commonwealth, problems with state and territory legislation and advantages to the states and territories of having commonwealth legislation. The arguments in support of all four justifications are examined in depth and all found to be lacking in supportive evidence. As a consequence, the case for national animal welfare legislation is weak, and the probability that it would cause more harm than good, to people and animals, cannot be rejected.
  5. The enforcement capabilities proposed under the NAWB2005 are draconian, and would appear to breach standard protocols of

cooperation between states, territories and the Commonwealth. They also involve serious invasions of privacy and threats to commercial confidentiality.

6. The concept of empowering Animal Liberation as national inspectors, responsible for enforcing Commonwealth laws, would be a highly controversial action opposed by most Australians. Indeed, the proposed empowerment of RSPCA officers may well divert them from the core activities upon which respect for the RSPCA in Australia is based.
7. The proposed composition of the NAWA is not representative of the diversity of stakeholders. For example, there is no representation by indigenous people nor hunters or fishermen. Without major stakeholders providing their perspectives it is unlikely that the decisions made by the NAWA will have the necessary balance needed to advance animal welfare within a wide range of contexts.
8. Where it is clear that Senator Bartlett and/or the Democrats have championed a diversity of animal issues over the years, it is also clear that most of the issues have been emotive and politically sensitive ones, and that their approaches have been highly judgemental. They have not demonstrated tolerance, respect nor understanding of the wide diversity of contexts within which people and animals interact in Australia, and thus their ability to provide wise leadership in animal welfare, at a national level, is yet to be demonstrated.
9. We find very little evidence to commend the proposed legislation and a great deal of evidence suggesting that it is flawed. With the possible exception of some extreme elements within the animal rights and animal liberation sectors, there are few communities within Australia that would not be adversely affected by it. Hunters (indigenous and non-indigenous) would undoubtedly be badly affected, but so to would many other groups. Indeed, it is difficult to find any group that interacts with animals, in any way, that would not be adversely affected. The bill deserves to be rejected.

## B. INTRODUCTION

Wildlife Management International (WMI), Field and Game Australia Inc. (FGA), Field and Game Federation of Australia (FGFA) and Bawinanga Aboriginal Corporation (BAC) are concerned about the proposed National Animal Welfare Bill 2005 (NAWB2005), currently subject to a Senate Committee inquiry.

All four organisations oppose cruelty and the infliction of unnecessary pain and suffering on animals: they thus support animal welfare principles. But they do not necessarily support animal rights and animal liberation philosophies, which are opposed to many interactions with animals to which some segments of Australian society are committed: hunting, wildlife conservation based on sustainable use, trade in wildlife, scientific experimentation with animals, intensive animal production, management of pest species, etc.

The rationale for having an NAWB2005, as put forward by Senator Bartlett, involves issues about the rights of animals and people in Australian society that go well beyond animal welfare *per se*. This rationale is fundamental to the mandate given to the Senate Inquiry, namely to determine whether the NAWB2005 provides an adequate framework to advance animal welfare at the national level, and thus it is a central focus of this submission.

That hunters (indigenous and non-indigenous) and other important stakeholders were excluded from the processes which resulted in both the NAWB2005 and the Australian Animal Welfare Strategy (AAWS; May 2004) is a matter of concern, because their perspective on these issues are obviously important ones in each state and territory. Furthermore, there is increasing awareness by the Commonwealth of the important role hunters can and are playing in critical management issues such as pest control [*Taking Control: national approach top pest animals*. November 2005. Report of the House of Representatives Steering Committee on Agriculture, Fisheries and Forestry inquiry into the impact on agriculture of pest animals].

Perhaps more important, those segments of Australian society that do hunt and fish, in any capacity, have good reason to be cautious about legislation

nominally aimed at improving animal welfare, but with the power to be used to withdraw their rights to hunt and fish. The duck hunting issue at the state and territory level provides a good example of the misuse of powers associated with the responsible management of animal welfare.

There is a view in some segments of Australian society that duck hunting is cruel and should be banned. Indeed, Senator Bartlett indicates the Democrats hold this view. In South Australia, politicians investigated the costs and benefits of duck hunting as perceived by all key stakeholders. Duck hunters were clearly identified as the most significant community group in the state contributing positively to wetland and waterbird conservation. Evidence purporting to demonstrate excessive wounding rates, thereby compromising animal welfare, was shown to be spurious and was rejected. So duck hunting was retained in South Australia.

Within NSW and Queensland this issue was handled completely differently. Duck hunting was assessed by animal welfare committees, in closed sessions, without the involvement of other stakeholders. They focused only on animal welfare issues and accepted the discredited evidence on wounding rates as though they were factual. Duck hunting was banned on this basis alone, which took away rights that hunters have held since the time of first settlement.

Sadly, a formal review after 5 years [Scientific Panel Review of Open Seasons for Waterfowl in NSW; NSW Government; Nov. 2000] indicated the ban had achieved little. Wetland habitat loss in NSW may have increased because private incentives to maintain wetlands for hunting had been removed. Eradication programs for ducks as pests and vermin in agricultural areas, had increased rather than decreased animal welfare problems. No conservation advantage could be demonstrated. The consequences of banning hunting on a very narrow interpretation of animal welfare, using powers attributed to animal welfare committees, may well have been to increase pain and suffering and compromise conservation.

Over and above hunting *per se*, the relationship between animals and indigenous people within Australia, forged over tens of thousands of years of cultural development, is a critically important part of Australia's unique heritage. To ignore this special situation in legislation aimed to establish overarching guidelines as to what will and will not be acceptable with regard to animal welfare in Australia is discriminatory in the extreme.

In making this submission, we:

- i. Provide a brief framework which allows animal welfare issues to be unfettered from conservation, animal rights and animal liberation. This should be the first step in developing any legislation on animal welfare.
- ii. Provide a critical review, in the light of this framework, of the rationale for the new legislation as proposed by Senator Bartlett. If there is no sound reason for introducing new legislation, then it would appear irresponsible to do so.

### C. CHRONOLOGY

The chronology and main documents examined are listed below:

1. In **August 2003**, the Australian Democrats tabled a draft **National Animal Welfare Bill** in the Senate.
2. In **May 2004**, the Primary Industries Ministerial Council endorsed **The Australian Animal Welfare Strategy (AAWS2004)** (<http://www.daff.gov.au/content/output.cmf?ObjectID=3C9C4ACE-B85B-465C-9C508C771F08C87E&contType=outputs>), developed by National Consultative Committee on Animal Welfare (NCCAW).
3. On **20 June 2005** the **National Animal Welfare Bill 2005 (NAWB2005)** was introduced into the Senate by Senator Andrew John Julian Bartlett (Australian Democrats, Queensland), in his *capacity as Animal Welfare spokesperson for the Australian Democrats* (SRS page 53, para 1).
4. On **20 June 2005** an extensive **second reading speech (SRS)** provided the Senate with a comprehensive rationale and justification for the bill as seen by the Democrats (Senate Official Hansard No. 9, 2005, Monday 20 June 2005, pages 51 to 56).
5. On **22 June 2005**, the Senate referred the proposed NAWB2005 to the Senate Rural and Regional Affairs and Transport Legislation

Committee (SRRATLC) for inquiry and report by the last sitting date in June 2006. The SRRATLC ("Information about the inquiry in [http://www.aph.gov.au/Senate/committee/rrat\\_ctte/animal\\_welfare05/inf.htm](http://www.aph.gov.au/Senate/committee/rrat_ctte/animal_welfare05/inf.htm)) was charged with considering whether:

- a. *a more consistent and enforceable national framework for animal welfare issues is required; and,*
- b. *the adequacy of the legislation*

#### **D. FRAMEWORK**

It is difficult to assess animal welfare legislation unless there are clear boundaries about what are and are not animal welfare problems. The framework provided here attempts to put animal welfare in perspective, so that the rationale for having a National Animal Welfare Bill, as proposed by Senator Bartlett, can be examined objectively.

##### **1. Biocentric versus Anthropocentric justifications of animal welfare**

**Society can justify pursuing animal welfare on anthropogenic grounds (benefits to people). It does not require any commitment to biocentric philosophies. Science is and will continue to be the most effective tool in improving animal welfare, so actions aimed at constraining research with animals may have limited utility in advancing animal welfare.**

- i. Animal welfare concerns can be justified on direct and indirect benefits to people (anthropomorphic justification). Society has more to gain than lose by avoiding practices that are cruel and involve deliberately increasing the pain and suffering of animals.
- ii. It is difficult to avoid expressing concerns about animal welfare in biocentric and anthropomorphic terms, but underpinning animal welfare action on such judgements creates difficulties. For example, if the measured probability of captive-raised wild orphan animals surviving in the wild is close to zero, releasing them back to the wild on



the basis that they would be "happier", compromises their welfare. When wild animals become overpopulated, starve and degrade their habitats, their welfare may be severely compromised by failing to act on the basis that "nature knows best".

- iii. The technical aspects of animal welfare can and should be well-grounded in science, improved continually through experimentation, and applied with objectivity. We assume such processes will operate when professionals are involved in relieving pain and suffering in humans.

## 2. Animal Welfare, Animal Rights and Conservation

**Animal welfare, animal rights (including animal liberation) and conservation are three independent issues, which are often in conflict. Boundaries need to be placed on each to better understand their role in different contexts**

- i. Animal welfare, animal rights and conservation are three separate areas of human endeavour, each with different goals, priorities and mechanisms of implementation.
- ii. It does not automatically follow that efforts to advance animal welfare through actions such as the NAWB2000 will improve conservation, nor vice versa. Conservation can be compromised if animal welfare or animal rights is advanced without considering the broader ramifications of actions taken. For example, international trade in wildlife is often opposed on animal rights grounds, but the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD), and the IUCN World Conservation Union all recognise that such trade, if sustainable, can generate tangible benefits for conservation.
- iii. It is beholden on legislators to ensure animal welfare legislation is primarily targeted at solving animal welfare problems.

### 3. What is animal welfare about?

**The core business of animal welfare is the reduction of *unnecessary pain and suffering in captive and wild animals* within different contexts. It should be objective and scientifically-based. Different contexts will always involve different levels of pain and suffering. When assessing the right to exist of individual contexts, such as the live export trade, battery hens or hunting, animal welfare is but one of many variables that society needs to consider.**

- i. Animal welfare is fundamentally about reducing pain and suffering in captive or wild animals. However, because animal rights proponents argue that any domination of animals by people causes pain and suffering, an important distinction needs to be made: animal welfare is about *reducing unnecessary pain and suffering in animals within different contexts*. Most animal welfare actions involve interventions in situations where wild or domestic animals are being subjected to *unnecessary* pain and suffering - not pain and suffering *per se*
- ii. Animal welfare actions are usually directed to the pain and suffering of domestic animals caused by inappropriate behaviour by **people**, but they also apply to wild animals adversely affected by **natural occurrences** (eg animals burnt in fires; adverse effects of a new disease, marine animals isolated by tsunami-type events; animals isolated in floods; animals starving in droughts).
- iii. **Context** is the core business of animal welfare.
- iv. Within the context of any established animal:human interaction, animal welfare experts aim to reduce unnecessary pain and suffering. They are constrained by **contextual boundaries**, but aim to improve welfare in whatever situation exists. **Codes of conduct** or **context-specific codes of practice** often result, which may be revised over time as new information or technology becomes available. At this level of resolution the technical skills of animal welfare experts are matched to the problem at hand.

- v. Levels of pain and suffering within different contexts involving the same animals may be completely different. **Contextual boundaries** of indigenous people hunting kangaroos with a spear differ greatly from those caring for an orphaned kangaroo in an urban environment.
- vi. The **acceptance or rejection of different contexts** (eg live trade in cattle; duck hunting; horse racing; cock-fighting; research on animals) cannot be made on the basis of animal welfare issues alone. Each context involves an array of interacting social, cultural and economic variables, with different costs and benefits to animals and people. Animal welfare is but one of many perspectives in any particular context and compromises are always needed. No equitable approach to the problem of society accepting or rejecting contexts can be achieved without the full participation of stakeholders. The technical skills of animal welfare experts are not matched to this problem - they can only provide insights from one perspective.
- vi. The national and international reputation of Australia with regard to animal welfare issues, and the leadership Australian can provide, will ultimately be based on the degree to which professional skills enable pain and suffering within particular contexts to be minimised.
- vii. To increase the role Australia plays in animal welfare will require investment in the experimental sciences upon which advances in animal welfare are made. Our reputation will be based on pragmatic problem-solving, and not on the adoption of extreme and perhaps unnecessary philosophies to underlie our commitment to reducing unnecessary pain and suffering in animals.

#### 4. What is animal rights about?

**Animal rights is a biocentric, largely urban-based concept which questions the rights of people to subjugate animals - wild or domestic. It is not a prerequisite for advancing animal welfare.**

- i. The concept that animals have "rights", in the sense of the rights and responsibilities people are familiar with, is theoretical and biocentric, involving moral and ethical assumptions that are easy to debate but difficult to validate.

- ii. In any overview, rights assigned to animals are invariably rights taken away from people (eg rights of access, tenure, use, food security) and thus transferring rights to animals tends to alienate people dependent on wildlife. Animal rights is fundamentally opposed to humans interfering with animals, domestic or wild. It opposes hunting on principle.
- iii. Animal rights is an untenable platform upon which to base legislation aimed at improving animal welfare because most contexts requiring animal welfare action are unacceptable in terms of animal rights.
- iv. Animal welfare can be pursued vigorously and effectively at local, national and international levels without having to ascribe to animal rights philosophies. It is not a prerequisite.

## 5. What is conservation about?

**Conservation can be defined as *the sum total of actions taken to preserve and maintain items to which we attribute a positive value*. Intrinsic and instrumental (use) values are both highly effective in driving conservation in different contexts. Animal welfare needs to be flexible and adaptive in order to complement rather than constrain conservation action.**

- i. In it's broadest sense, conservation can be defined as *the sum total of actions taken to preserve and maintain items to which we attribute a positive value* (Webb 2002. Pacific Conservation Biology 8:12-26). This definition accepts that humans have never allocated resources to preserving items that they valued negatively, nor taken much interest in the fate of items that did not impact on them in any way (neutral values).
- ii. When applied to animal conservation, the definition is not controversial, because both intrinsic and instrumental (use) values can motivate investment in conservation. However, instrumental values driving conservation are often derived through consumptive use and trade.

- iii. Conservation is a high priority within Australian society and it frequently involves killing animals (pests, harvesting, hunting). Animal welfare legislation needs to be flexible and adaptive to ensure enough it does not compromise conservation.

### **E. IS THE CASE FOR A NATIONAL ANIMAL WELFARE BILL COMPELLING?**

Given that a compelling case should exist for any new proposed legislation, in the sense of clearly defined *problems* that the new legislation would ideally be able to address efficiently and effectively, it is important to assess the **rationale for the NAWB2005**, as presented by Senator Bartlett, in the second reading speech (SRS pages 51 to 56).

If the case for the new legislation cannot be rejected through critical analysis, then it would add strength to Senator Bartlett's claim that the legislation was merited.

#### **1. Is "animal welfare" the focus of the bill?**

**Senator Bartlett's speech indicates that the primary aim of the proposed legislation is not about solving *animal welfare* problems *per se* but rather about providing a legal mechanism to constrain classes of interaction between animals and people that compromise the rights of the animals concerned. It is thus not surprising that he finds state and territory legislation inadequate, because it is largely restricted to animal welfare when he is clearly after much more.**

- i. Senator Bartlett claims that we *as humans, rely on animals and their products for survival and profit* (SRS Page 56, para 4). However, he considers this reliance means *we are beholden to them [animals] just as they are to us* (SRS Page 56, para 4). That we have an obligation to *provide animals with greater protection and care for the duration of their lives* (SRS Page 56, para 4). That *community conscience demands better welfare, care, protection and rights for all animals* (SRS Page 56, para 6).

- a. Some individuals may commit themselves to an emotional tie with animals, but this should always be a matter of choice. All life on earth depends on solar energy but we do not need to adopt solar worship as a consequence. We look to science to address problems such as green house gasses. Animal welfare issues can be addressed professionally, scientifically and effectively without having to commit to any particular philosophy about animals.
  - ii. In terms of the overall aim of introducing the new legislation, Senator Bartlett is explicit: *this legislation is about recognising the importance, contribution and sacrifice of animals* (SRS Page 56, para 4). The *National Animal Welfare Authority*, to be appointed under the NAWB2005 (Page 52, para 3), is the perceived mechanism through which the *care, protection and use of animals can be coordinated, monitored and reviewed* (Page 52 para 3). It will *regulate the use of animals for all private, commercial, institutional, educational and government research and experimentation* (Page 52 para 3).
    - a. That the goal of introducing the legislation is restricted to animal welfare *per se* can be rejected. Senator Bartlett makes it clear that the legislation is about providing a legal mechanism to intrude into any area where people and animals interact, with the power to correct a string of diverse problems they are concerned about. The rights of all people in Australia to interact with animals in any way would be severely compromised.
    - b. In contrast to this goal, there seems to be minor priority given to a goal of actually improving the technical aspects of animal welfare within context-specific situations, which is arguably the core business of animal welfare.
2. **Does the Commonwealth need to be involved in animal welfare issues, which are fundamentally a state/territory responsibility?**

**The four main arguments used to justify the NAWB2005 are advantages to and perceived responsibilities of the Commonwealth, problems with state and territory legislation and advantages to the states and territories of having Commonwealth legislation. The arguments in**

**support of all four justifications are examined in depth and all found to be lacking in supportive evidence. As a consequence, the case for national animal welfare legislation is weak, and the probability that it would cause more harm than good, to people and animals, cannot be rejected.**

Senator Bartlett justifies Commonwealth involvement in animal welfare through the NAWB2005 in four ways.

- **Advantages to the Commonwealth** of being involved in animal welfare and rights issues;
- **Responsibilities of the Commonwealth** to be involved in animal welfare and rights issues;
- Perceived **failings of state and territory legislation** with regard to animal welfare and rights issues.
- **Advantages to states and territories** of having Commonwealth legislation.

The arguments proposed for each of these four justifications are examined below.

**i. Advantages to the Commonwealth**

- a. Senator Bartlett claims that the proposed legislation *would demonstrate to the Australian community ... that this country and its peoples are committed to meeting community expectations and market obligations in relation to animal welfare issues.*
  - a.i. In reality, only some segments of the Australian community would require such a demonstration. Many segments of the community, for example, researchers, educators, scientists, farmers, graziers, hunters, fishermen, pet owners, indigenous people and those involved in intensive animal production, may consider Commonwealth investment in such a demonstration to

be unnecessary. There is no evidence indicating that they have been consulted.

- b. Senator Bartlett claims that it is to the advantage of the Commonwealth to *demonstrate to ... our international trading partners that this country and its peoples are committed to meeting community expectations and market obligations in relation to animal welfare issues.*
  - b.i. Whether such a demonstration is required should be established unequivocally before investing in it. Commonsense would dictate that some export markets are prepared to pay premium prices for produce obtained through strict and verifiable animal welfare production guidelines, and so incentives for producers to invest in that form of production exist. The economic consequences of demanding all production follows such guidelines, irrespective of market demand, is questionable.
  - b.ii. If Australia was to establish production guidelines that were well separated from international norms, which is only likely to be possible by significant, the Commonwealth would be faced with the additional dilemma of producers demanding all imported products meet the same standards. Such stricter domestic measures would have serious ramifications within the context of the WTO.
  - b.iii. The approach Australia takes to animal welfare and animal rights issues internationally, in forums such as CITES, CBD, IUCN and IWC, leaves no doubt that the Commonwealth takes animal welfare and rights very seriously, and that it is very cognizant of NGOs committed to animal rights philosophies. Indeed, many of the world's nations consider Australia quite extreme in this regard now.



## ii. Responsibilities of the Commonwealth

- a. According to Senator Bartlett, *community concerns for animals used [in scientific, educational and research] are on the increase with the expansion of biotechnology research, and it is incumbent upon the Commonwealth to address these concerns* (Page 55, para 6). That *much of the research involving animals used for scientific and research purposes, falls under the "commercial in confidence" category, denies the community the opportunity to scrutinise the processes and practices employed* (Page 55, para 8).
  - a.i. In assessing the issue of controlling agricultural pest animals, the Commonwealth has adopted a stance that if animal welfare needs to be compromised in order to achieve efficient and effective control of pests then so be it. The Commonwealth thus accepts that animal welfare is but one of many criteria to consider when examining specific contexts [*Taking Control: national approach top pest animals*. November 2005. Report of the House of Representatives Steering Committee on Agriculture, Fisheries and Forestry inquiry into the impact on agriculture of pest animals].
  - a.ii. The animal welfare component of these concerns raised by Senator Bartlett is addressed effectively through state and territory legislation. Scientific research on animals has long required approval from ethics committees, now established within every research centre within Australia, for the specific purpose of ensuring animal welfare standards are not breached. It is difficult to see now this could be improved on the ground by the NAWB2005.
  - a.iii. The Commonwealth may examine changes in community attitudes in more depth, but in doing so would need to consult with all segments of the community. To enact legislation before doing so would seem difficult to justify.
  - a.iv. Biotechnology research is at the front line of improving the health and survival of both animals and humans, and if pursued vigorously, under existing codes of practice for animal welfare, may benefit both Australian people and

animals greatly. Concerns about this issue do not appear to be an animal welfare issue *per se*, but rather a fundamental belief held by some that research on animals is morally wrong.

- a.v. Given significant government (Commonwealth, State and Territory) and private sector investment in boosting research and innovation, with biotechnology as a major focus and animal welfare concerns addressed through ethics committees, it would seem the Commonwealth has a responsibility to ensure Australia's international competitiveness is not unduly compromised by new legislation that could be perceived as seriously compromising commercial research and development.
- b. *Aside from the National Health and Medical Research Council's (NHMRC) Animal Welfare Code of Conduct, which is only applicable to NHMRC funded projects, there is currently no means by which animals subjected to such use [science, research and education] can be readily managed, monitored and reviewed on a national scale (Page 55, para 6).*
  - b.i. This statement is factually incorrect. The very stringent criteria for establishing ethics committees within the NHMRC Animal Welfare Code of Conduct has been widely adopted in state and territory legislation, and thus applies to perhaps most research projects within Australia.
  - b.ii. No justification is provided as to why Australia should invest significant resources in managing, monitoring and reviewing animal welfare issues on a national scale, when it is not a Commonwealth responsibility and no evidence is presented suggesting it is a significant concern of most Australians.
- c. It is considered that the 1982 Senate Select Committee on Animal Welfare is twenty years old, and that this in itself constitutes a rationale for the NAWB2005, on the basis that *animal welfare needs to once again become a Commonwealth priority (Page 52, para 8).*

- c.i If the results of the 1982 inquiry were no longer considered pertinent, then it would seem that another inquiry rather than new legislation would be required.

### iii. Failings of state and territory legislation

- a. Senator Bartlett considers *animal welfare as practiced in Australia is a dog's breakfast of policies from state to state* (Page 52, para 9). He claims that *lack of interest in animal welfare at a federal level* is the reason *Australia is forced to continue with its hodge-podge of state and territory animal welfare legislation* (Page 52, para 6). That the *vagaries of each state's and territory's animal welfare legislation, and its application, make it virtually impossible for there to be any rapid advancements in animal welfare* (page 53 para 7). He is also concerned that state and territory legislation is not uniform in the timing or updating (Page 53, para 9).
  - a.i. Given the context-specific nature of animal welfare problems, and the variation that exists between states and territories in those contexts, there would appear to be sound reasons for the states and territories to tailor animal welfare concerns to local circumstances. For example, 30% of people living in the Northern Territory are Aboriginal people, and it could be argued that hunting and gathering is the most widespread form of land use in the Northern Territory. It occurs in national parks and reserves, under Commonwealth and State control, and extends from Aboriginal lands into lands used for cattle grazing and other purposes. The contexts within which animal welfare needs to be addressed may be totally different to some other states.
  - a.ii Duck and quail hunting is banned in some states on the basis of perceived animal welfare concerns, but encouraged in others states and territories because it is considered culturally important and creates incentives to conserve wetlands on private lands. These represent essential compromises at state and territory level.

- a.iii. Many would argue that animal welfare concerns have moved extremely rapidly within Australia over the last 20 years, throughout Australia.
- a.iv. If the lack of synchrony between state and territory legislation on animal welfare was a serious impediment, one would need to argue the same case for all other state and territory legislation.
- b. Senator Bartlett argues that *diverse and incongruent state and territorial legislation* (Page 53, para 7): *minimise the opportunity for creating binding codes of practice; reduce knowledge-sharing; render comprehensive monitoring impossible; ensure "uniform standards" remain lower common denominator, and put comparative state-by-state reviews out of the question* (Page 53, para 7). *Wherever there are inconsistencies, there are unnecessary complications, confusion, duplication and inefficiencies, none of which are conducive to improved productivity and economic growth, or to optimum animal welfare outcomes* (Page 54, para 8). However, he also argues that in the case of measures within states and territories that are stricter than the measures proposed by the Commonwealth Minister, *those provisions would prevail over those of the bill* (Page 54, para 10).
  - b.i. Codes of practice are developed by the Commonwealth now with assistance from the states and territories, and they involve information sharing and such compromises as may be needed to account for different activities at the state and territory level. This approach is realistic, practical and respects the diversity of contexts between states and territories.
  - b.ii. The need for state-by-state reviews and monitoring has not been established.
  - b.iii. The opinion that one set of values and one set of laws to protect them, should be applied to all states and territories, regardless of profound contextual differences, is not a compelling one with animal welfare or a variety of other issues. Diversity leads to advances in different states or

territories that can be followed or rejected by other states or territories. In contrast, any single approach, which must automatically be a compromise, risks making average approaches to animal welfare the standard.

- b.iv. The concept of retaining any state or territory measures that were stricter than the Commonwealth measures seems to contradict the criticisms of having diverse state and territory legislation, suggesting that what is being sought is a "ratchet", in which any stricter measure at any level is retained and then used to ratchet-up, but never down, and Commonwealth legislation.
- c. Senator Bartlett states that the *greatest loss* is that there will never be a *national database on animal experimentation* (Page 53, para 7). In addition, he sees state and territory control constraining the ability to create a *national tissue bank ... which would allow for a significant reduction in the number of animals required for medical and scientific research* (Page 53, para 7)
  - c.i It is unclear why such a data base would be necessary. When one considers that most animal breeders and producers are continually involved in various forms of in-house experimentation, and that the type of experimentation is changing continually, any central database would be in a constant state of revision and update if it were created.
  - c.ii It is unclear why animal welfare legislation would constrain the ability to create a national tissue database. Resources would seem to be the only constraint.
  - c.iii The object of captive animal production technologies, and of sustainable wild harvest strategies, is to maximize the sustainable production of animals for use by people for food or other purposes. Within research generally, which is but one use, commercial factors are operating continually to minimize the number of animals needed without compromising statistical rigor in the results.

- c.iv. The idea that no animals should be used in research, and if this cannot be achieved then the minimum number should be used, is the pursuit of an animal rights rather than an animal welfare goal.
- d. Senator Bartlett claims state and territory legislation is *reactive* rather than proactive... *occasional expressions of outrage about acts of cruelty to individual animals after the event, rather than striving to prevent them* (Page 53, para 8). *There is a need for proactive intervention ... which in the view of the Australian Democrats... can only be provided at a national level* (Page 54, para 7).
- d.i The introduction of animal welfare legislation in each state and territory, and the introduction of protocols requiring ethics committee approvals for all research involving animals, is strikingly proactive.
- d.ii That the media tends to focus on *acts of cruelty to individual animals after the event*, and that this generates *expressions of outrage* in the community, signifies that the public is deeply concerned about animal cruelty and that the media, which tracks public interest closely, has determined that the public is not interested in many perhaps less dramatic animal welfare issues.
- e. Senator Bartlett is concerned that the *criminal component* of state and territory animal welfare legislation is not driven by appropriate enforcement capability (Page 53, para 10). That there is variation *in the application [and enforcement] of animal welfare legislation* that comes from the diversity of people involved in regulating (eg Livecorp, RSPCA, individual RSPCA inspectors, Government officers, special constables)(Page 54, para 6).
- e.i. People may wish to see society enact the highest level of enforcement capability to their area of passion, but it is by no means clear that the public at large, in any state or territory, is so inclined. They may not support the allocation of significant extra resources to animal welfare, when in all states and territories human welfare, in its many and varied

forms, is rarely perceived as being adequately funded or enforced.

#### **iv. Advantages to States and Territories**

- a. Senator Bartlett sees that *states and territories, along with the federal Government, would be able to engage in mutually beneficial transactions that would have an immediate impact on Australia's ever expanding international trade and treaties involving domestic animals, livestock and wildlife* (Page 54, para 8).
  - a.i. The Commonwealth, states and territories already have mechanisms for transactions that advance animal welfare in a mutually beneficial and agreeable ways. The Australian Animal Welfare Strategy is but one example of an effective cooperation and collaboration.
  - a.ii. No evidence is provided to substantiate the claim that the NAWB2005 would enhance or expand international trade - it may well have the opposite effect.
- b. It is claimed that the NAWB2005 *would provide all those involved with animals and animal by-products a substantial foundation on which to build a workable and flexible approach to animal welfare nationally* (Page 54, para 9).
  - b.i. If no compelling claim has been made that the state and territories require a *workable and flexible approach to animal welfare nationally*, then there is no compelling evidence suggesting it would be an advantage.
- c. It is claimed that these *measures would make it easier for the bill to leap the procedural and bureaucratic barrier, more so if the National Animal Welfare Authority ... is forthcoming* (Page 54, para 11).
  - c.i. It could equally be argued that the bill will add procedural and bureaucratic barriers - a second tier of regulation.

3. Are the proposed enforcement capabilities of the NAWB2005 consistent with Commonwealth involvement in state and territory areas of responsibility?

**The enforcement capabilities proposed under the NAWB2005 are draconian, and would appear to breach standard protocols of cooperation between states, territories and the Commonwealth. They also involve serious invasions of privacy and threats to commercial confidentiality.**

- i. Senator Bartlett proposes that a *National Animal Welfare Authority* [NAWA] (Page 52, para 3) be constituted as the mechanism by which the *care, protection and use of animals can be coordinated, monitored and reviewed* (Page 52 para 3) ...*with overarching responsibility for the legislation, its application and implication* (Page 54, para 11). Inspectors will have *functions and powers that go across state and territorial borders, which ensures the bill is not a toothless tiger* (Page 55, para 4). Indeed, the proposed powers are remarkable (Page 52 para 3). Senator Bartlett sees the NAWA as a Commonwealth body charged to *regulate the use of animals for all private, commercial, institutional, educational and government research and experimentation* (Page 52 para 3): that it will *ensure the use of animals for such purposes* [research and experimentation] *are accountable, open, ethical, humane and responsible* (Page 52 para 3). The inspectors are further charged with achieving *a reasonable balance between the welfare needs of animals and the interests of people who use animals for their livelihood* (Page 52, para 3). That they would ensure actions *reflect human community attitudes and expectations as to how animals should be treated*. (Page 52, para 3). *The Australian Democrats* apparently want the NAWB2005 to emphasise *the monitoring of all animals used for scientific, educational and research purposes, irrespective of how the research is funded* (Page 55, para 7).
- a. The aim appears to be to empower the Commonwealth to force states and territories, and through them the public, to underpin all associations they have with animals with an idealistic position on the reverence of the animals concerned. This is an unnecessary approach to solving any problem.



- b. It is unlikely that the states and territories would agree to the Commonwealth assuming such powers, and nor is it clear that the Commonwealth is interested in doing so.
- c. That the NAWA would be responsible for achieving *a reasonable balance between the welfare needs of animals and the interests of people who use animals for their livelihood* (Page 52, para 3), suggests that the highly diverse contexts in which people and animals interact in Australia would be decided upon unilaterally by this authority.
- d. Providing legal mechanisms to force compliance with "community attitudes", without any attempt to validate them, would legalise political expediency.

**4. Would the proposed inspectors be acceptable to the community?**

**The concept of empowering Animal Liberation as national inspectors, responsible for enforcing Commonwealth laws, would be a highly controversial action opposed by most Australians. Indeed, the proposed empowerment of RSPCA officers may well divert them from the core activities upon which respect for the RSPCA in Australia is based.**

- i. According to Senator Bartlett, the NAWA will appoint *national animal inspectors* (Page 55, para 4) that is considered *the most invaluable undertaking of the Authority*. Those inspectors will be drawn from (Page 55, para 4): *existing RSPCA inspectorate; officers from various Departments of Agriculture and Primary Industries; and, individuals from external organisations ... such as Animal Liberation*.
  - a. Elevating RSPCA officers to national inspectors, with the considerable powers over state and territory legislation envisaged, may be to confront them with complex legal problems which go way beyond those normally involved in RSPCA'S core business.

- b. The goal of appointing members of Animal Liberation as national inspectors fails to acknowledge that many in the Australian community see Animal Liberation as an extreme element of the animal rights movement.
- c. Indigenous people are unlikely to accept interference from national inspectors that were untrained in cross-cultural communication and who were opposed in principle to the interactions with animals that are fundamental to the maintenance of culture.

**5. Is the proposed composition of the NAWA sufficiently representative to ensure an equitable balance of interests**

**The proposed composition of the NAWA is not representative of the diversity of stakeholders. For example, there is no representation by indigenous people nor hunters or fishermen. Without major stakeholders providing their perspectives it is unlikely that the decisions made by the NAWA will have the necessary balance needed to advance animal welfare within a wide range of contexts.**

- i. It is proposed that *the Authority should comprise 13 members ... appointed by the [Commonwealth] Minister* (Page 54, para 12), and that it include (Page 55, para 1): *three members will represent the Commonwealth, 2 members will represent commercial producers or users of animals and animal products (one intensive and one extensive), 2 members will represent animal welfare NGO's, 2 members will represent community groups and 2 will be scientists, 1 an animal ethicist.*
  - a. There is no representation of Aboriginal or Torres Strait Islanders on the NAWA despite their interactions with animals being critical to sustenance, survival and the maintenance of the diversity of culture and tradition that comprises Australian society.
  - b. There is no representation of hunters and fishermen, commercial or recreational, yet these are clearly important interest groups.

- c. State and territory representation is not specified.
- d. Relative to user groups with practical knowledge of animal welfare issues in different contexts, the proposed structure is highly biased towards representatives who may be philosophically opposed to many contexts in which animals and people interact in Australia.

**6. Are the credentials to provide leadership in animal welfare within Australia adequately demonstrated**

**Where it is clear that Senator Bartlett and/or the Democrats have championed a diversity of animal issues over the years, it is also clear that most of the issues have been emotive and politically sensitive ones, and that their approaches have been highly judgemental. They have not demonstrated tolerance, respect nor understanding of the wide diversity of contexts within which people and animals interact in Australia, and thus their ability to provide wise leadership in animal welfare, at a national level, is yet to be demonstrated.**

Given that the NAWB2005 appears to have been drafted with minimal consultation with states, territories, the Commonwealth or stakeholders in Australia, it is reasonable to question whether or not those who drafted the NAWB2005 have sufficient credentials to unilaterally provide leadership in this issue.

- i. Senator Bartlett lists a range of animal issues that the Democrats have championed, which fall into discrete categories (Page 52, para 11):
  - problems with agricultural farming practices (*the size of battery hen cages; the size of ... single sow stalls; cattle face branding*).
  - problems with the live export trade (investigation of 800 cattle which *died of asphyxiation on a short journey from Darwin to Irian Jaya* in early 1999) (Page 52, para 12).

- problems with feral animal culling (*inhumane culling of brumbies in NSW*).
  - problems with animal experimentation (no great apes to *be involved in medical or scientific experimentation or research in Australia* (Page 53, para 1).; *seek alternative methods to animal experimentation*).
  - problems with wildlife use (*inquiry into commercial use*).
  - problems with wildlife trade (*to ban the elephant ivory trade*).
  - problems with conservation (*the protection of cassowaries and their habitats from destructive land clearing* (Page 53, para 1); *protecting our and the world's threatened species*).
  - problems with hunting (Senate motion (25 March 1998) *calling on all State and Territory Governments to ban ... duck hunting on the basis of their view that it was cruel and environmentally damaging*).
  - problems with animal welfare generally (*efforts to set the lead at national level* (Page 52 para 10), 10 years ago (Page 53, para 4) not followed by the major Parties).
- a. Whereas this list establishes that Senator Bartlett and/or the Democrats have shown a long-standing interest in a wide range of issues concerning animals, those interests are more consistent with a commitment to animal rights than to the technical aspects of improving animal welfare within different contexts.
  - b. The inquiry into the commercial use of wildlife in Australia, headed by the democrats, is clearly an exception. This inquiry did receive submissions from a wide range of stakeholders, and the findings were both balanced and pragmatic. This broad consultation contrasts markedly with the process leading to the NAWB2005.
- ii. With regard to the live export trade, Senator Bartlett believes it *should never have got off the ground* (Page 54, para 4) and that *we should be*

*seeking to wind(it) up* (Page 54, para 4). He considers: *the live export trade has never been appropriately managed, monitored or enforced* (Page 54, para 4); *that it now grows worse with every passing day* (Page 54, para 4). *Livecorp has repeatedly failed to provide and enforce the most basic of animal welfare standard* (Page 54, para 5); *that Livecorp itself has been complicit in the maiming, torture and unnecessary deaths of thousands of livestock animals annually and ... is in breach of ... state animal welfare laws and ... codes of practice* (Page 54, para 5); *that there is a need to impose a limit on live exports* (Page 56, para 2).

- a. It is difficult to equate such extreme opposition towards an important export industry and agricultural production sector within Australia with a commitment to improve animal welfare in different contexts within Australia.

## **F. CONCLUSIONS**

We find very little evidence to commend the proposed legislation and a great deal of evidence suggesting that it is flawed. With the possible exception of some extreme elements within the animal rights and animal liberation sectors, there are few communities within Australia that would not be adversely affected by it. Hunters (indigenous and non-indigenous) would undoubtedly be badly affected, but so to would many other groups. Indeed, it is difficult to find any group that interacts with animals, in any way, that would not be adversely affected. The bill deserves to be rejected.