

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

By email: rrat.sen@aph.gov.au

Dear Sir/Madam

National Animal Welfare Bill 2005

Attached is NSW Young Lawyers Animal Rights Committee's Submission on the National Animal Welfare Bill 2005 ("the Bill").

The New South Wales Young Lawyers Animal Rights Committee ("the Committee") is part of NSW Young Lawyers, a voluntary organisation and a division of the Law Society of New South Wales. Membership of the Committee is open to all NSW law students and NSW legal practitioners who are less than 36 years of age and those in their first 5 years of practice. Since its establishment in December 1997, the Committee has been an advocate of legal reforms concerning a range of legal issues relating to animal welfare.

Given the limited time in which to make submissions, the Committee has provided its comments on a number of the provisions of the Bill, but has not considered in detail all of its provisions. The Committee would welcome the opportunity to provide further comments on the Bill at a public hearing.

Should you have any questions at this stage please do not hesitate to contact Committee Chair Angela Radich at arc.chair@younglawyers.com.au or Vice Chair Stephanie Abbott at stephanie.abbott@younglawyers.com.au

Yours faithfully

per: 

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NSW YOUNG LAWYERS ANIMAL RIGHTS COMMITTEE

A submission to the Senate Rural and Regional Affairs
and Transport Legislation Committee on the
National Animal Welfare Bill 2005

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Disclaimer: The NSW Young Lawyers Animal Rights Committee was established by NSW Young Lawyers, a professional association in the State of New South Wales, Australia, for lawyers under 36 years of age or in their first 5 years of practice. This Submission is not intended to be used as a source of legal advice. If you require legal advice please contact the Law Society of New South Wales. If you cite information or legislation appearing in this Submission, you should confirm whether subsequent changes have been made. Any correspondence in relation to this submission should be addressed to the Committee Chair, Angela Radich, at the address indicated above, or may be e-mailed to arc.chair@younglawyers.com.au. The NSW Young Lawyers Animal Rights Committee website is located at <http://arc.younglawyers.com.au>

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General comments

A national approach

The Committee wholeheartedly supports this endeavour to enact national animal protection legislation. There is presently significant inconsistency between the animal welfare provisions in the various States and Territories and a national approach to animal protection is sorely needed to make progress in this area.

The present State/Territory-based system is becoming increasingly complicated, particularly for animal agriculture businesses expanding into national corporations, or engaging in inter-State trade. Each State and Territory not only has its own Act to regulate animal welfare, but also its own set of Codes of Practice for different animals and for different animal industries. Some Codes are based on National Model Codes, however others are not. Some State/Territory laws are more stringent than others. Therefore, it is preferable, and more equitable, for all Australians to be able to refer to one set of animal welfare standards. Further, the animals protected by such legislation have the same capacity to suffer, irrespective of the jurisdiction in which they are found, and should therefore be afforded the same level of protection.

We note that the Commonwealth Department of Agriculture, Fisheries and Forestry has now prepared The Australian Animal Welfare Strategy, one of the objectives of which is to facilitate improved consistency of legislation across the States and Territories for improved and sustainable animal welfare outcomes.¹ However, we note that the implementation of the Strategy would lie with the States and Territories so that a consistent approach is not ensured.

Structure of the Bill

The Committee agrees with the comments made by the World Society for the Protection of Animals ("WSPA") regarding more logical ordering of the content of the Bill and the prefacing of the provisions with the premise on which the need to protect is based.²

Part 1 – Preliminary

Title

The Committee agrees with WSPA that in the short title of the Bill the word "welfare" should be replaced by the word "protection",³ or even "care and protection". We also agree that the type of animals encompassed by the Bill should not be listed in the long title of the Bill, but that it should simply refer to all animals.⁴

¹ Department of Agriculture, Fisheries and Forestry, *The Australian Animal Welfare Strategy* (2005) page 11.

² World Society for the Protection of Animals, *WSPA Comments on the Australian Draft National Animal Welfare Bill 2005* (2005) page 1.

³ World Society for the Protection of Animals, *WSPA Comments on the Australian Draft National Animal Welfare Bill 2005* (2005) page 3.

⁴ World Society for the Protection of Animals, *WSPA Comments on the Australian Draft National Animal Welfare Bill 2005* (2005) page 2.

Section 2(2) – Commencement of s 81

Issue

Section 2(2) stipulates that s 81 of the Bill (Use for certain scientific purposes unlawful) will commence on 1 January 2010.

Recommendation

- Section 2 of the Act should contain an additional provision that imposes a ban on the commencement (as opposed to the continued undertaking) of s 81 experiments one year after the commencement of the Bill.

Discussion

The Committee accepts that it may not be practicable to impose a sudden and immediate ban on the scientific practices stipulated in s 81. While the completion of experiments currently underway is justifiable, under the Bill s 81 experiments can still be initiated without penalty at any point after assent, so long as they are completed before 2010. The Committee considers that this is an excessively long transition period, given that the scientific practices in question have already been banned in some States,⁵ which suggests that alternatives are presently available. We therefore submit that there should be a ban on the initiation of new experiments one year after the commencement of the Bill.

Section 3 – Purposes of Act

General

The Committee submits that the purposes of the Bill as set out in s 3 are too specific, as they are limited to particular types of animals or particular uses of animals. We agree with WSPA that the purposes of the Bill should contain general statements of principle on which the Bill is based.⁶

"Capture and killing", "wild animals"

Section 3(b)(ii) states that one of the purposes of the Bill is to prohibit the "capture and killing" of "wild" animals for the purpose of entertainment or sport.

Although this section is only a statement of purpose, it does not encompass animals that are not wild, nor the breeding and keeping of animals for such purposes. The Committee therefore submits that the word "wild" should be removed and the section should be amended to read "capture, killing, breeding and keeping".

"Unjustifiable, unnecessary or unreasonable pain"

Section 3(c) of the Bill provides that one of the purposes of the Bill is to "protect animals from unjustifiable, unnecessary or unreasonable pain".

⁵ See s 92 *Animal Care and Protection Act 2001* (Qld).

⁶ World Society for the Protection of Animals, *WSPA Comments on the Australian Draft National Animal Welfare Bill 2005* (2005) page 3.

The Committee is opposed to the use of concepts such as "*unjustifiable, unnecessary or unreasonable pain*" in legislation relating to animals. The use of such terms in current State and Territory legislation operates to permit practices, particularly in relation to "stock" or "farm" animals, that cause an animal pain and suffering as long as that pain and suffering is considered to be justifiable, necessary or reasonable. What constitutes justifiable, necessary or reasonable pain is often influenced by economic considerations as well as what are considered to be routine and accepted animal husbandry practices. The inclusion of these words in the Bill allows a watering down of the protection afforded to animals, therefore the Committee recommends that all references to "*unjustifiable, unnecessary or unreasonable pain*", or similar concepts, be removed from the Bill.⁷

Section 5 – Application of Act

Issue

The Constitutional validity of the Bill.

Recommendation

- Consideration should be given to alternative methods of ensuring that the Commonwealth Parliament has power to pass the Bill, such as referral of the States' powers to the Commonwealth.
- If Australia does sign and ratify an international agreement relating to the welfare of animals, the Commonwealth should amend the Act, evincing a manifest intention to implement the international agreement with reference to the provisions of the original Bill.

Discussion

Under the Australian federal system the Commonwealth Parliament's power to pass legislation is limited to a number of enumerated "heads of power" contained in s 51 of the Constitution (we note, however, that the power of the Commonwealth Parliament to pass laws in relation to the Territories is not limited to those heads of power).⁸ The States have power to pass legislation on the residual matters not encompassed by those heads of power. Traditionally, responsibility for animal welfare/protection has fallen to the States and Territories, who have enacted legislation in relation to these matters.

Section 5 of the Bill stipulates the situations in which Bill is to apply by reference to various Commonwealth heads of power. The relevant heads of power are:

- s 51(i) "Trade and commerce with other countries, and among the States".
- s 51(xx) "Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth".
- s 51(xxix) "External affairs".

We note that s 5 of the Bill states that its provisions are to apply to the extent that they "*give effect to a prescribed treaty or international agreement*", which would fall

⁷ See, for example, ss 41(1)(a)(iii), 64(2)(a), 64(2)(g)(iii) and 64(h).

⁸ Section 122 Constitution.

within the "external affairs" power above. As far the Committee has been able to ascertain, Australia is not a signatory to, and has not ratified, any international treaties, conventions or resolutions pertaining to the welfare or humane treatment of animals.

Even if Australia does sign and ratify an international agreement after the enactment of the Bill, the provisions of the international agreement will not affect the ambit of the application of the Bill. This is because the Bill must be made with the intention of implementing the international agreement. This intention cannot be imputed retrospectively. To give effect to any international agreements to which Australia subsequently becomes a party, the legislature must pass an amendment Bill with the clear intention of implementing that international agreement. Further, the Bill must unambiguously indicate that the provisions of the original Act are intended to apply to the extent of that international agreement.

Overall, there are a number of provisions that clearly fall within one of above heads of power, such as those relating to the live export of animals, the import of animal products and the animal welfare provisions as they apply to foreign or trading corporations. However, the Bill would not apply to intra-State trade and commerce,⁹ natural persons (such as pet owners) or unincorporated farmers and sole traders (unless, of course, another head of power applies). Therefore the operation of the Bill will most likely be piecemeal¹⁰ with a number of gaps necessarily having to be filled by State legislation. As a consequence, it is likely that there would be a great deal of inconsistency between the laws of different States, which would defeat one of the key purposes of the Bill.

One way to overcome this potential problem is for the States' powers on animal welfare matters to be referred to the Commonwealth under s 51(xxxvii) of the Constitution. However, the Committee recognises that such a referral may be politically problematic with the States wishing to retain control over such matters.¹¹

Note: The Committee's comments in relation to the substantive provisions of the Bill assume that the provisions are within power - we have not considered the constitutional validity of each individual section.

Section 7 – Act to bind the Crown

Issue

Section 7(1) states that the Bill will bind the Crown in all its capacities. However, s 7(2) exempts the Crown from prosecution for offences.

Recommendation

- Section 7(2) should be removed from the Bill.

⁹ See Dwyer, N. "Animal welfare legislation in Australia for the future – what scope is there for a national approach?" (2000) 13 ANZCCART News 2 at 3

¹⁰ See Dwyer, N. "Animal welfare legislation in Australia for the future – what scope is there for a national approach?" (2000) 13 ANZCCART News 2 at 4.

¹¹ Dwyer, N. "Animal welfare legislation in Australia for the future – what scope is there for a national approach?" (2000) 13 ANZCCART News 2 at 2.

Discussion

The Committee submits that there is no basis for Crown immunity from prosecution under the Bill. We submit that the animals utilised by Commonwealth bodies (for example, for research) should be entitled to the same level of protection as animals used by other organisations.

Part 2 – National Animal Welfare Authority

General

The Committee supports the creation of the National Animal Welfare Authority ("NAWA") to enforce the Bill; however it is crucial that it be publicly accountable and adequately funded.

The Royal Society for the Prevention of Cruelty to Animals ("RSPCA") currently enforces the various State and Territory animal welfare legislation; however its ability to investigate and prosecute cruelty offences is hindered by its limited resources. The RSPCA also states that it is not a government body and, by implication, that it is not directly answerable to the public.¹²

While other law enforcement bodies, such as the police, are publicly accountable and adequately resourced, their many other law enforcement responsibilities compete with animal welfare law enforcement for priority. This is particularly problematic as animal cruelty offences are often viewed as less serious than offences committed against humans. The enforcement of animal welfare laws is also an area that requires specialised knowledge and a different approach to other types of law enforcement, which the police are often not well-equipped to handle.

We submit that the creation of a dedicated animal welfare authority could ameliorate the deficiencies in the present enforcement regime.

Section 10 - Constitution of Authority

The Committee supports the proposed membership of the NAWA.

We note that the Australian Pork Limited ("APL") submission has criticised what it perceives is an animal welfare bias in the NAWA membership.¹³ However, the Committee would point out that the NAWA's main objective is the promotion and enforcement of *animal welfare* laws as permitted under the Bill, hence animal welfare concerns need to be adequately represented in NAWA membership.

The Committee disputes APL's contention that at least five members of the NAWA will be animal "activists". Rather, only two of the 14 members will necessarily come from animal welfare backgrounds - those representing animal welfare non-governmental organisations. We submit that the two members representing community groups need not come from an animal welfare perspective (i.e. they may

¹² See RSPCA NSW website under "Our Objectives" for an example:
<http://www.rspcansw.org.au/rspca-aboutus.htm#about>

¹³ Australian Pork Limited (2005) *Submission on the National Animal Welfare Bill 2003*, pages 2-3.

represent consumer groups). It is interesting to note that APL appears to presume that the member who is an ethicist would necessarily be "against them".

The inclusion of two animal welfare members on the NAWA is the minimum to be expected for an authority dealing with animal welfare and is balanced against the two members representing commercial users of animals. Further, all appointments are to be made by the Minister, whom the Committee trusts will take any possible bias into consideration when making appointments to the NAWA.

The Committee accepts that the concerns of the animal agriculture industry, scientific opinion and the wider community also need to be represented and so does not oppose the remaining proposed membership of the NAWA.

Part 3 - Inspection

General

The Committee generally supports the inspection provisions of the Bill, however due to time constraints we have not considered the operation of these provisions in any detail.

Section 15 - Appointment of inspectors

The Committee suggests that s 15(4) be amended to stipulate the basis on which an inspector's appointment may be terminated, say for misconduct or a failure to investigate a possible breach of the Bill.

Section 19 - Limited entry to provide animal relief

The Committee suggests that s 19(1)(a)(i) be amended to apply not only where an animal is "entangled" (say, in fencing) but where, for example, it is trapped in mud, or otherwise requiring urgent assistance or treatment.

Section 23 - Issue of warrant

We submit that s 23(1)(a) be amended to allow for the issue of a warrant to relieve an animal that is not only in physical pain, but also that is distressed/suffering.¹⁴

Section 33 - General powers

Section 33(i) of the Bill gives inspectors the power to brand, mark, tag or otherwise identify an animal in accordance with the usual practices for branding, marking, tagging or otherwise identifying that species of animal. The Committee does not support this section in its current form. The Committee opposes the practice of hot iron branding or any other marking practices that cause an animal pain.

¹⁴ The Committee would make the same recommendation in relation to ss 26(c)(iv), 33(d) and 41(1)(a)(iii).

Part 4 – Animal welfare offences

Section 63 - Breach of duty of care prohibited

The Committee supports the national introduction of a duty of care to animals. This is not a novel provision as a duty of care has been introduced in Queensland, and has existed in Tasmania for over 10 years.¹⁵

The imposition of a duty of care acknowledges that, whilst animals can be owned, they are more than mere property, to be treated as the owner sees fit. Animal sentience requires humans, as their owners, to give them greater consideration than an inanimate piece of property. The introduction of a duty of care would go some way to accomplishing this. We note that the term "*person in charge of an animal*" requires definition in the Bill.

The Committee queries the inclusion of s 63(3)(b) in the Bill, which provides that in order for there to be a breach of the duty of care, the a person must have failed to take reasonable steps to ensure that an animal's needs are provided for, *and* that appropriate handling of the animal has not been ensured. Surely, if an animal's basic requirements are neglected, this alone should constitute a breach of the duty of care whether or not appropriate handling of the animal had occurred. This section requires clarification.

The Committee also suggests that a further sub-section be added to s 63 as follows:

"When determining what an animal's needs are, regard will be had to the requirements of the particular species and also to individual characteristics of the animal."

Section 64 - Animal cruelty prohibited

Section 64(2)(e) provides that a person is taken to be cruel to an animal if the person uses an electrical device on the animal. The Committee supports this section as it applies to the use of (for example) electric prods on animals. However, this section may unintentionally extend to situations not originally envisaged (such as the use of electric shavers to remove the hair of an animal prior to surgery). We therefore suggest that the words "*so as to cause the animal pain*" be inserted after the word "*device*".

Sections 64(2)(h)(iii), (2)(i), (2)(k), (3) all relate to acts particular to domesticated dogs. The Committee suggests that they be put in a separate section for clarity.

We also suggest that s 64(f), dealing with confinement and/or transport of animals, be moved to a separate section for clarity.

The Committee further suggests that it expressly be made an offence for a person to fail to provide for an animal's fundamental social and behavioural needs. While this may be encompassed by ss 64(2)(f)(iii) (confining or transporting an animal in a manner that causes undue stress to the animal) and (iv) (confining or transporting an animal in a way that is inappropriate for the animal's welfare) an express provision would remove any doubt in this regard.

¹⁵ *Animal Care and Protection Act 2001* (Qld), s 17; *Animal Welfare Act 1993* (Tas), s 6.

Section 80 – Mulesing of sheep

The Committee commends and supports the inclusion of this section in the Bill. However, we agree with the WSPA submission¹⁶ that other common mutilations of farm or stock animals (such as dehorning, debeaking, castration, branding etc...) should also be prohibited or regulated by the Bill.

Penalties generally

The Committee suggests that the confiscation and resale of animals be provided for in certain cases. This has the dual effect of punishing the offender, and also of removing the animal from an inadequate welfare environment.

It is envisaged that such a penalty will only be applied where it is unlikely that the offender will adequately provide for his or her animals in the future, for example, in the case of a repeat offender.

Part 5 – Live exports

General

The Committee is opposed to the continuation of the live export industry in Australia due to the stress and trauma inherent in long voyage animal transportation. The cruelty presently occurring in the live export industry is set out in some detail in the submissions by Ms Suzanne Cass¹⁷ and the Committee's views on the present system of regulation can be found in its *Submission to the Live Export Review*.¹⁸

The Committee agrees with the views of other national animal welfare organisations such as the RSPCA and Animals Australia, that the live export trade should be replaced by a frozen/chilled carcass trade, which would remove the need to transport animals and would ensure that they are slaughtered in accordance with Australian welfare standards. We submit that there is no economic reason to allow the live export trade to continue as it presently costs Australia \$1.5 million in lost Gross Domestic Product, \$270 million in lost household income and 10,500 in lost jobs.¹⁹

However, if the live export trade is to continue, the Committee submits that it must be strongly regulated by an independent body capable of ensuring that animal welfare is a priority. It is also necessary for the other severe deficiencies and inadequacies in the current regulatory system to be addressed.

¹⁶ World Society for the Protection of Animals, *WSPA Comments on the Australian Draft National Animal Welfare Bill 2005* (2005), page 8.

¹⁷ Cass, S. *Submission to the Senate Committee for Rural and Regional Affairs and Transport on the Animal Welfare Bill 2003: Support Document – Live Exports* (2003).

¹⁸ The Submission can be found at:

http://www.lawsociety.com.au/uploads/files/1073966582171_0.6565900173100165.pdf

¹⁹ Heilbron, *Impact of the Live Animal Export Sector on the Meat Processing Industry*, as cited in Cass, S. *Submission to the Senate Committee for Rural and Regional Affairs and Transport on the Animal Welfare Bill 2003: Support Document – Live Exports* (2003) at 10.

Section 88 – Limitation on live exports

The Committee supports the transfer of the regulation of the live export industry to the NAWA.

Section 90 – Duties of veterinary surgeons

The Committee suggests that it be made an offence under the Bill for a veterinary surgeon to misreport the number of animal deaths or the physical condition of animals exported.

Section 91 – Liability

The Committee supports the inclusion of this section in the Bill.

Part 6 – Imports of animal products

Section 93 – Import permits

The Committee supports the requirement for the laws and codes of practice in the country of origin of imported animal products to provide comparable animal welfare standards and protection to the laws of Australia. However the Committee suggests that the words "*or better*" be inserted following the word "*comparable*" to allow for the laws in the other country to be more stringent than Australia's.

Section 94 – Restricted imports – cat and dog fur

Issue

Section 94 provides that the Governor-General may not make regulations that reduce the present restrictions on the importation of cat fur, dog fur or a cat or dog fur product.

Recommendations

- The restrictions on the import of dog and cat fur should be embodied in the Bill.
- The present restrictions should be strengthened to prohibit all importation of dog and cat fur.
- Further supporting laws should be enacted to prohibit the sale, distribution, advertising, etc. of dog and cat fur.

Discussion

The Committee supports the entrenchment of the ban on the import of dog and cat fur presently contained in regulation 4W of the *Customs (Prohibited Imports) Regulations 1956* (Cth). However, we submit that the restriction should be embodied in the Act to send a clear message that Australia is serious about eliminating the trade in dog and cat fur.

We also consider that regulation 4W is deficient in that it only provides a *partial* ban on the importation of dog and cat fur, as permission may be granted by the Minister (or an authorised person) for the import of dog or cat fur, or dog or cat fur products.

The Committee is concerned that this discretion to allow the import of dog and cat fur may undermine the purpose of the import ban, which is to send a clear message that dog and cat fur is not welcome in Australia. Allowing the importation of dog and cat fur at the discretion of the Minister (or an authorised person) also makes enforcement of the ban significantly more difficult, as an inquiry must also be made as to whether permission has been granted for the import of the particular product in question. Allowing the grant of permissions to import dog and cat fur in some cases therefore introduces further complexity that would not arise under a total import ban.

We also note that regulation 4W provides no guidance as to the circumstances in which permission may be granted for the import of dog or cat fur. The regulation simply states that the Minister (or authorised person) may take into account any matter that they consider relevant. The Committee is of the view that if such permission is to be granted, the regulation must specify the circumstances that are to be taken into account in considering whether to grant such permission. This would provide much needed clarity and would also assist in policing (i.e. to ensure that fur is not used for a purpose other than that for which permission to import has been granted).

In addition to the above, the Committee is concerned that the illegal trade in dog and cat fur may continue unless there are also restrictions on activities associated with the import of dog and cat fur, such as the sale, distribution and advertising of dog and cat fur products within Australia. In our submission more comprehensive legislation (such as that enacted in the United States²⁰) is required to eliminate the trade in dog and cat fur. This would also allow for the possibility that the dog and cat fur sold in Australia is not sourced overseas, and is therefore not imported (for example, it was recently discovered that dog and cat fur was being produced within the European Union).

Part 7 – Labelling of animal products

Issue

Section 95(2) of the Bill provides for the establishment of a code of practice for the labelling of animal products with details of the methods used to produce such products, where the methods may influence consumer choice.

Recommendations

- The definition of "*animal product*" should be amended to include the products of living animals.
- The proposed code of practice should also require the labelling of products tested on animals.

²⁰ See the *Dog and Cat Protection Act 2000* (US) – Public Law 106-476, 114 Stat 2101, codified at 19 U.S.C 1308.

- The Bill should contain a provision requiring compliance with the proposed code of practice.

Discussion

The importance of such a provision can be seen in relation to the import of cat and dog fur in Australia, as the Humane Society International's 2003 investigation found that the fur industry deliberately misleads consumers about product composition. For example, a dog fur product may be sold as Gae-wolf, Sobaki, and Asian jackal, and a cat fur product as Wildcat, Goyangi and Katzenfelle. The Committee therefore has a very real concern that clothing and toys made from cat and dog fur is being deliberately mislabelled as fictitious animals or not labelled at all.

However, we submit that the definition of "*animal product*" in the definition section of the Bill should be amended to include the products of living animals (see below for more detail). Unless such a change is made there would be no requirement, for example, that the methods of egg production be included on product labelling.

The Committee also submits that labelling also be required to identify products tested on animals with details of the tests undertaken. It should also be made clear that the law applies to the testing of component parts of products as well as the final products themselves.

We also consider it important that the Bill contain a provision requiring compliance with the proposed code of practice so that compliance is not merely voluntary.

Part 8 – Animals used for experimental purposes

Definition of "pain"

Issue

"Pain" is defined by reference to "*the same sensation that an average, well human, having suffered the same trauma, would experience*": s 96. This does not take into account the fact that animals and humans may react differently to identical external stimuli.

Recommendations

- "*Pain*" should be defined by reference to "*an average, well member of that particular species of animal*".
- The definition of "*pain*" should also include a provision which states that "*clearly observable signs of distress are sufficient, but not necessary, to establish that an animal is experiencing pain*".

Discussion

The Committee commends the recognition of the fact that the pain suffered by animals is comparable to that experienced by humans. However, humans and animals often have different responses to the same external stimuli. An extreme example of this would be a fish – as opposed to a human – being out of water.

Similarly, rats may become distressed, or even die when administered "recreational" doses of MDMA ("ecstasy") and exposed to loud music, whereas this is a recreational activity for some humans. We therefore suggest that the definition of "pain" be amended to refer to the effect of external stimuli on "an average, well member of that particular species of animal", rather than a human.

It may also be difficult to determine whether an animal is in fact, suffering pain. Although pain may be inferred from physical signs of distress, sometimes an animal's suffering is not readily observable. For example, a fish that has been hooked and subdued with a cloth may not appear to be distressed although this would indisputably not be the case. We therefore recommend that a provision be inserted stating that behaviour that unequivocally indicates that an animal is distressed is sufficient, but not necessary, to demonstrate it is suffering pain. Consideration may also be given to the development of codes of practice or regulations which set out the indicators, for each species of animal, that the animal is in pain by reference to scientific methods (for example, increased heart rate, changes in breathing, etc.).

Provision for fundamental social and behavioural needs

The Committee submits that an express provision ought to be inserted to ensure that the fundamental social and behavioural needs of animals used for scientific purposes are met. It may be that this is encompassed by the definition of "pain", which includes psychological pain, in that any failure to meet these needs may result in the animal suffering. However, an issue may arise as to whether that suffering is sufficient to constitute psychological "pain". Similarly, we note that s 108, which deals with the management of pain, only relates to the management of physical pain. No provision is made for ensuring that psychological harm (such as extreme fear) is avoided or managed appropriately.

Part 10 – Administrative provisions

General

In order to ensure that the NAWA is adequately resourced the Committee suggests that the fines paid for breaches of the Bill be paid to it and applied to the enforcement of the Bill. This would permit the NAWA some financial independence from the Government so that its decisions are not influenced by any concerns about continued funding.

Section 133 – Disclosure of interests

The Committee strongly supports the requirement that any members of the NAWA who have a conflict of interest disclose that conflict and not take part in decision-making in relation to that matter. We consider it extremely important that all members of the NAWA are independent.

Schedule 2 – Definitions

"Animal product"

The Committee submits that the definition of "*animal product*" be amended to not only include products whose physical constituents are derived from slaughtered animals (such as gelatin), but to also include products derived from living animals (for example, eggs, milk and wool). We also submit that the words "*largely or wholly*" be deleted from this section.