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

Dear Sir/Madam

SUBMISSION ON THE NATIONAL ANIMAL WELFARE BILL 2005

The National Animal Welfare Bill 2005 is an important step towards improving the welfare of animals in Australia. It provides for a stronger and consistent model for animal welfare in Australia which will remedy the current inconsistent and sometimes outdated approaches available in relevant state and territory legislation. Given the involvement of the Commonwealth in a large number of activities that involve the welfare of animals, this Bill is timely and welcome.

This Bill has a number of innovative features which will greatly assist with achieving the purpose of the Bill. These include proposals to recognise a duty of care to animals, to appoint inspectors, collect data, establish a national Authority, control the use of research funds, control the importation of animal products from countries with weaker animal protection standards and provide standards for labelling.

There are however a number of aspects of the Bill which could be improved and these are as follows:

General comments

1. **Ministerial responsibility** - The Bill is proposed to fall within the portfolio of the Minister with responsibility for primary industries. Given that the range of issues covered by this Bill go well beyond primary industry matters it is strongly

suggested that this legislation be made a responsibility of the Prime Minister and Cabinet. This new arrangement would also avoid risks of conflicts of interest between production and welfare in the primary industries ministerial portfolio.

2. **Crown's immunity** – s 7(2) of the Act unreasonably strengthens the Crown's immunity to prosecution. This is not appropriate for this Bill and should be removed.
3. **Purposes of the Act** – The need for a separation between the purposes of the Act and the purposes in Schedule 1 is unclear. Both should be combined to articulate broad purposes to improve the welfare of animals.

There are also several restrictions in these sections which inappropriately weaken the purpose of the Act:

- selectively mentioning several cruel practices gives the impression that other practices may not apply;
- the narrowing of the scope of the purposes by the terms unjustifiable, unnecessary and unreasonable is not appropriate in this section. This defence can be introduced elsewhere;
- the restriction in the Schedule purposes to animals under the control of humans is not justifiable.

In addition, the purpose of the Bill should be to *promote best practice and to enforce minimum standards*, not to promote minimum standards as is mentioned in the Schedule.

4. **Animals as property** – since the Bill recognises a duty of care to some animals, the Bill should logically also explicitly recognise a corresponding right of animals to be treated humanely. It should also explicitly recognise animals as sentient beings rather than items of property. This welcome shift away from the current antiquated concept of animals as property would be further assisted by avoiding phrases such as 'animal and other thing'.
5. **Classes of animals** – the Bill unreasonably differentiates between classes of animals in its application of welfare standards. All animals, whether they are wildlife, feral, domestic, laboratory or farm animals have the same capacity for pain. Differentiation such as in s 86 should therefore be deleted as it is not needed. Any practice that is cruel should be able to be dealt with under the general cruelty/care sections.
6. **Enforceability of codes of practice** – a major fault in most current state and territory animal welfare statutes is their failure to make codes of practice enforceable, thus providing a defence to anyone adhering to a code of practice. Given that such codes are simply minimum standards rather than best practice, many animals are allowed to suffer needlessly. Codes of practice should therefore be enforceable under this new Bill, or alternatively, a best approach would be to incorporate the codes in Regulations to the Act.

7. **Definitions** – there are a number of words and phrases used in the Bill which are not defined. These include ‘pain’, ‘undue pain’, ‘wildlife’, ‘control’, ‘cruelty’, ‘unjustifiable, unnecessary or unreasonable’. This Bill presents a fresh opportunity to define some of these nebulous terms and to set new standards in how they are interpreted. The definition of pain included in section 96 should apply to the whole Bill.

Specific points:

8. **Subsection 5(1)** - should explicitly include the seas to encompass cruel acts to fish, marine mammals and animal being transported to or from Australia.
9. **Subsections 19(1)(a)(i)** - should also include suffering from heat or cold.
10. **Subsection 33(i)** - should prohibit identification of animals by a method that causes pain or distress, not simply disfigurement or damage.
11. **Sections 63 and 64** - Penalty of 300/1000 PU should be increased. This is much too low compared to penalties included in the *Environmental Protection and Biodiversity Act 1999* for instance where the penalties are up to 5000 penalty units.
12. **Subsection 64(2)(h)(iii)** – unjustifiable, unnecessary or unreasonable *overbreeding* should be replaced by unjustifiable, unnecessary or unreasonable *breeding* as overbreeding is always unjustifiable, unnecessary or unreasonable. Further, this section should not focus merely on dogs but apply more broadly to other domestic and farm animals which are being bred unjustifiably, unnecessarily or unreasonably.
13. **Subsection 64(2)(f)(ii)** re transport must be reworded to ‘... in a manner that causes, *will cause or is likely to cause* injury, pain, etc. Injuries to animals are rarely caused at the time of the confinement or loading, but often later as a result of these activities. This amendment will also enable prosecution where the risk of injury is well known or could have been known and thus should have been avoided
14. **Subsection 64(2)(l)** - wording should be changed to ‘kills *or causes to be killed...*’ This will avoid difficulty in prosecuting offences when a third party is involved.
15. **Subsection 65(2)** should be under its own separate heading as it does not relate to alleviation of pain.
16. **Sections 68 & 69** - should apply to animals generally, not merely dogs.
17. **Section 73** - baiting by an approved person should also be subject to the restrictions included in (1)(a), (b) and (c). Therefore (1)(d) should be deleted and s 73(1) should be amended to include baiting.

18. **Subsection 73(3)** should include immediate and thorough monitoring to determine the number and species of animals killed by the bait as well as a requirement that animals which are found suffering from poisoning be euthanised promptly.
19. **Prior to section 74**, a general section prohibiting surgical operations for cosmetic purposes only should be included.
20. **Section 81** should not selectively target cosmetic and sunscreen product testing. Instead a general clause prohibiting the use of animals for testing any products when humane alternatives are available should be included.
21. **Subsections 82 (a) and (f)** - the word 'public' must be deleted to avoid providing a defence if the causing of pain could be shown to be for private entertainment.
22. **Section s 108** - should be moved elsewhere - it is out of place in the middle of the sections dealing with licences.
23. **Schedule 2 – Definitions**
 - 'animal product' should include products derived from both slaughtered and live animals in order to prohibit the importation of products obtained cruelly from live animals, including bear bile, antler velvet, etc
 - 'humane methods of slaughter' should specify methods which painlessly render the animal insensitive to pain.
 - 'use' should include keeping, riding, hunting and fishing.
 - 'vehicle' should explicitly include road vehicles.
 - 'welfare' should include both physical and emotional health safety and wellbeing.

I trust that these comments will be helpful in making this new piece of legislation a valuable means of improving the welfare of animals in Australia.

If you have any enquiries on this submission, I can be contacted at (07) 4781 6424, or by email at Dominique.Thiriet@jcu.edu.au

Yours faithfully



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