

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Voice for Animals (Independent Office of
Animal Welfare) Bill 2015

October 2015

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Chapter 1

Introduction

1.1 The Voice for Animals (Independent Office of Animal Welfare) Bill 2015 was introduced into the Senate on 23 June 2015. On 25 June 2015, the Senate Selection of Bills Committee referred the bill to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 15 September 2015.¹

1.2 On 18 August 2015 the Senate granted an extension of time for reporting until 15 October 2015.

1.3 The reasons given for the Selection of Bill's referral included:

- animal welfare is an important issue and one which is of concern to a large number of Australians – across political divides;
- animal welfare receives regular media coverage and the issues raised are of concern to a number of large animal welfare networks; and
- over recent years, the federal Animal Welfare Strategy (and its independent advisory committee) and the Inspector General of Animal Welfare and Live Animal Exports have been disbanded.²

Conduct of the inquiry

1.4 The committee's recently conducted inquiry into the Criminal Code Amendment (Animal Protection) Bill 2015 received in excess of 800 submissions.³ Given the timeframe for this inquiry, and the number of inquiries the committee is currently undertaking, the committee agreed not to advertise widely or accept public submissions. The committee instead wrote inviting submissions from a group of organisations. Uninvited submissions to the committee's inquiry were not considered. Ten submissions were received, as shown at Appendix 1.

1.5 The committee held a public hearing in Canberra in Monday, 14 September 2015. A list of witnesses who appeared at the public hearing may be found at Appendix 2.

Acknowledgements

1.6 The committee appreciates the time and effort of all those who provided both written and oral submissions to this inquiry. Their work has assisted the committee considerably in its inquiry.

1 Senate Selection of Bills Committee, *Report No. 8 of 2015*, dated 25 June 2015.

2 Senate Selection of Bills Committee, *Report No. 8 of 2015*, Appendix 5, dated 25 June 2015.

3 The committee's report on the Criminal Code Amendment (Animal Protection) Bill was tabled on 12 June 2015.

A note on references

1.7 References in this report are to individual submissions as received by the committee. References to the Hansard transcript throughout the report refer to the proof transcript. Page numbers may vary between the proof and official transcript. The Hansard transcript of the committee's hearing is available on the Parliament's website at www.aph.gov.au.

Background to the bill⁴

1.8 The Voice for Animals (Independent Office of Animal Welfare) Bill 2015 (the bill) provides for the establishment of a Commonwealth statutory authority which would assume responsibility for advising on the protection of animal welfare in Commonwealth regulated activities.

1.9 The bill proposes to establish the Office of Animal Welfare (OAW)⁵ as an independent statutory authority, headed by a Chief Executive Officer (CEO). The bill provides details in relation to the appointment, proposed functions and terms and conditions of the CEO. It also provides for staff and consultants and proposes the establishment of the Office of Animal Welfare Advisory Committee (OAWAC) to advise the CEO and provides for reporting requirements.

1.10 It is proposed that the OAW would assist the CEO in his or her functions which would include:

- the review and monitoring of live export standards and the Exporter Supply Chain Assurance Scheme;
- reporting on animal welfare issues that impact the Commonwealth;
- reporting on the work of animal welfare committees; and
- reviewing animal welfare laws and policy that impact the Commonwealth.

1.11 To support the OAW in the performance of its duties, it is proposed that the CEO would also be assisted by the OAWAC, the membership of which would include representatives from:

- animal welfare organisations;
- consumer groups;
- scientists and ethicists specialising in animal welfare issues;
- the Department of Agriculture; and
- commercial producers (or purchasers) of animals or animal products.

4 The following section of the report is based on information contained in the *Explanatory Memorandum*, Voice for Animals (Independent Office of Animal Welfare) Bill 2015, p. 1.

5 It is noted that throughout the inquiry the terms 'Independent Office of Animal Welfare' (IOAW) and 'Office of Animal Welfare' (OAW) have been used interchangeably, particularly by submitters.

1.12 Under the proposed legislation, the CEO would be required to provide reports to the Minister for Agriculture. These reports – which may include recommendations for reforms to animal welfare legislation and standards and advice on issues such as the harmonisation of Commonwealth/state animal welfare laws – would be required to be tabled in the Parliament.

1.13 The bill also proposes that the Minister for Agriculture would be required to respond to any recommendations made in these reports and table these responses in the Parliament.

Comment of the Senate Scrutiny of Bills Committee

1.14 The Senate Standing Committee for the Scrutiny of Bills has a standing brief to consider all bills as to whether they trespass unduly on personal rights and liberties, and related matters.

1.15 The Scrutiny of Bills Committee indicated that it had no comment to make on this bill.⁶

Provisions of the bill⁷

Part 1 – Preliminary

1.16 Part 1 of the bill contains its preliminary clauses (1–4), including detail in relation to the title and commencement of the bill. Clause 3 also provides definitions for key terms contained in the Act.

Part 2 – Office of Animal Welfare

1.17 Part 2 of the bill includes Clauses 5–8 which primarily relate to the OAW. These clauses provide for the establishment of the OAW, and that the OAW consists of the CEO and staff. These clauses also outline the OAW's functions and provide that the OAW has the privileges and immunities of the Crown in right of the Commonwealth.

Part 3 – Chief Executive Officer, staff and consultants

1.18 The main provisions of the bill, as detailed in the Explanatory Memorandum, are contained in Parts 3 and 4 of the bill and are outlined below.

1.19 **Clause 9 – Functions of the CEO** provides that the CEO's functions would include:

- the Livestock Standards functions;
- the Reporting functions; and
- the Department Review functions.

6 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest, No. 7 of 2015*, 12 August 2015, p. 50.

7 The following section of the report is based on information contained in the *Explanatory Memorandum*, Voice for Animals (Independent Office of Animal Welfare) Bill 2015, pp 1–3 and Voice for Animals (Independent Office of Animal Welfare) Bill 2015, pp 1–15.

1.20 The livestock standards functions would require the CEO to review and monitor the Australian Standards for the Export of Livestock and the Exporter Supply Chain Assurance System. In addition, the CEO would be required to undertake inquiries and prepare reports about these matters.

1.21 Under the proposed new legislation, the CEO's Reporting functions would require the CEO to:

- make the OAW a Centre of Excellence for the collection and dissemination of information about animal welfare issues that impact the Commonwealth;
- develop an Australian Animal Welfare Strategy (which would provide a national framework to identify priorities, coordinate stakeholder action and improve consistency across all animal use sectors);
- undertake inquiries, commission research and prepare reports in relation to issues such as animal welfare, animal export, the importation of animals and animal products and the possible harmonisation of Commonwealth, state and territory animal welfare laws; and
- undertake inquiries and prepare reports in relation to the activities and effectiveness of the Live Export Advisory Group and the Office of Animal Welfare Advisory Committee.

1.22 Under the proposed Department Review functions, the CEO would also be required to:

- consider the activities of the Department that relate to monitoring compliance with (and enforcement of) the Commonwealth's animal welfare laws;
- consider the effectiveness of the Department's implementation of the Commonwealth's animal welfare policy; and
- undertake inquiries and prepare reports in relation to the function.

1.23 **Clause 10 – Minister may give directions to the CEO** provides that the Minister may direct the CEO about the performance of his or her functions and that the CEO must comply with these instructions.

1.24 **Clauses 11 – 13** provide rules about the appointment of the CEO, the term of their appointment and arrangements for Acting CEOs.

1.25 **Clauses 14 – 20** provide rules about the CEO's remuneration and allowances, leave entitlements, outside employment, disclosure of interests, other terms and conditions, resignation and termination of appointment.

1.26 **Clauses 21 – 23** provide for the appointment of staff, persons to assist the CEO and consultants.

Part 4 – Office of Animal Welfare Advisory Committee

1.27 **Clauses 24 – 28** provide for the establishment of the OAWAC to advise the CEO in relation to his or her functions. It is proposed that the membership of OAWAC would include the CEO and:

- three members representing non-governmental animal welfare organisations;
- one member representing consumer groups;
- one member representing scientists specialising in animal welfare issues;
- one member representing ethicists specialising in animal welfare issues;
- one member representing the Department;
- one member representing commercial producers, or commercial purchasers, of animals or animal products; and
- not more than two other persons, as the CEO considers appropriate.

1.28 These clauses also outline how the OAWAC's procedures would be managed and rules about the disclosure of interests of the Committee members.

Part 5 – Miscellaneous

1.29 **Clauses 29 – 31** provide detail in relation to:

- the production of an annual report and its tabling in the Parliament;
- the production of reports for the purpose of section 9; and
- delegation of functions and powers by the CEO.

Chapter 2

Issues

Submissions

2.1 As noted in Chapter 1, the committee agreed not to advertise the inquiry widely or accept public submissions. Instead, a group of animal welfare organisations and the Department of Agriculture were invited to submit to the inquiry. Submissions were received from the following organisations:

- Humane Research Australia;
- PETA Australia;
- RSPCA Australia;
- Animal Liberation;
- Sentient: The Veterinary Institute for Animal Ethics;
- Lawyers for Animals;
- Animals Australia;
- Voiceless;
- Department of Agriculture; and
- World Animal Protection

Support for the bill

2.2 It is noted that the vast majority of submissions received were from organisations which advocate an increased focus on animal welfare. It is also noted that the majority of these submissions expressed support for the Voice for Animals (Independent Office of Animal Welfare) Bill 2015.¹

2.3 RSPCA Australia, for example, expressed support for the intent of the bill and argued that a 'national approach to animal welfare policy and independent oversight of the effectiveness of the live animal export regulatory framework is desperately needed'.² It was further argued that:

A national approach is needed to promote consistency and to develop a proactive strategy that addresses animal welfare issues before they become national headlines. This will create further certainty for business, investment and trade, reduce unnecessary duplication at a state government

1 See, for example, RSPCA Australia, *Submission 3*, Sentient: The Veterinary Institute for Animal Ethics, *Submission 5*, Lawyers for Animals, *Submission 6* and World Animal Protection, *Submission 10*, p. 3.

2 RSPCA Australia, *Submission 3*, p. 1.

level, and most importantly, contribute to the sustained improvement of animal welfare standards across the country.³

2.4 In expressing the view of the Barristers Animal Welfare Panel (BAWP) Director, Mr Graeme McEwen, told the committee that the organisation was supportive of the proposed new legislation and argued that what the bill seeks to do is to encourage the Department of Agriculture – whilst maintaining its powers – to:

... focus properly on animal welfare, because it needs to do so if we are going to move forward. Ultimately, this must be to the benefit of industry. It creates confidence. So this bill, I think, gets it right.⁴

2.5 PETA Australia (PETA) indicated that whilst it is an 'animal rights' rather than 'animal welfare' organisation which 'will always champion an animal rights approach' it is also an organisation that works to minimise animal suffering. PETA noted that its position on the bill overall is, therefore, one of support:⁵

We believe that the establishment of an IOAW is essential and justified ... and a promise to the Australian public long overdue to be fulfilled.⁶⁷

2.6 Animal Liberation indicated that whilst the new legislation proposed by the bill is 'commendable in principal'⁸ the bill does not go far enough. The organisation proposed a measure similar to the Inspector General of Animal Welfare but with greater power – a National Animal Welfare Authority – designed to protect animal welfare in Commonwealth-regulated activities. It was argued that such a body, which could operate concurrently with state and territory laws, and which 'has the power to examine all animal welfare matters within Federal government jurisdiction would provide better protection for animals in Australia'.⁹

Government position on the bill

2.7 The submission provided by the Department of Agriculture outlined the government's position in relation to the issue of animal welfare, particularly as it relates to agricultural production. The submission also made specific comment in relation to the bill and the establishment of an independent office of animal welfare.

3 RSPCA Australia, *Submission 3*, p. 1.

4 Mr Graeme McEwen, Barristers Animal Welfare Panel, *Committee Hansard*, 14 September 2015, p. 16.

5 PETA Australia, *Submission 2*, [p. 1].

6 PETA Australia, *Submission 2*, [p. 1].

7 As noted in the previous chapter, throughout the inquiry the terms 'Independent Office of Animal Welfare' (IOAW) and 'Office of Animal Welfare' (OAW) have been used interchangeably, particularly by submitters. For the purposes of this report, the term Office of Animal Welfare (OAW) will be used, except when using direct quotes or when used to refer to the Office proposed by the then Government in 2013.

8 Animal Liberation, *Submission 4*, pp 2–3.

9 Animal Liberation, *Submission 4*, pp 2–3.

2.8 The Department noted that, on 31 July 2013, the then government announced it would establish an independent position – the IOAW – to review and audit Australia's live export trade processes and develop systems to strengthen Australia's animal welfare assurance system.¹⁰

2.9 However the Department's submission also noted that on 31 October 2013, the Minister for Agriculture, the Hon. Barnaby Joyce, MP, announced that the government would not proceed with the establishment of an IOAW and that the government was:

... confident that the establishment of a regulatory framework for livestock exports was designed to minimise the risk of adverse animal welfare outcomes and that the Inspector General position added an unnecessary [sic] layer of bureaucracy without any practical benefit.¹¹

Australian Animal Welfare Strategy

2.10 The Department of Agriculture's submission noted that, as part of its responsibilities in relation to animal welfare, it 'supports the implementation of the Australian Animal Welfare Strategy (AAWS) as the national blueprint for sustainable improvements in animal welfare'.¹²

2.11 During the committee's hearing, the Department was questioned about the current status of the AAWS. Deputy Secretary, Phillip Glyde indicated that whilst the AAWS had 'been through at least two iterations over the last eight to 10 years', the 'Australian Animal Welfare Strategy exists; it is still there'.¹³ Mr Glyde further explained that:

Previously, the Australian Department of Agriculture had played a pretty strong role in bring together all of the parties, in regular meetings, to monitor the progress of that. The government decided, as a cost-saving measure, to abolish the AusAWAC, as it was called, the advisory committee in relation to AWS. It, nevertheless, maintained the strategy and it remains the responsibility of all of the parties to implement their various responsibilities under the strategy. Essentially, that is what the Australian government is doing.¹⁴

2.12 Mr Glyde also indicated that a Commonwealth/State committee currently exists under AGMIN. It was further noted that:

10 Department of Agriculture, *Submission 9*, p. 1.

11 Department of Agriculture, *Submission 9*, p. 2.

12 Department of Agriculture, *Submission 9*, p. 2.

13 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

14 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

It is a task group that is underneath the chief executives of the departments of agriculture around the country that, in essence, monitors the roles of government. But there are responsibilities for industry in there as well.¹⁵

Comments in relation to specific sections of the bill

Department of Agriculture – conflict of interest

2.13 A number of submissions raised concerns that, at the Commonwealth level, the Department of Agriculture is the department responsible for animal welfare in Australia.¹⁶

2.14 Animals Australia, for example, indicated that the organisation's 'foremost issue with the Bill in its present form is that it is not clear within which Department the IOAW will sit'. However, assuming that it is most likely to sit within the Department of Agriculture, it was argued that, under that framework, there would be a 'clear and serious conflict of interest within the Department':¹⁷

The Department's primary responsibility is ensuring profitable and productive primary industries within Australia, with its responsibility for animal welfare being a secondary and often conflicting responsibility. This makes the Department largely unsuited to carry out its responsibilities for animal welfare in Australia, as, in the majority of instances, improvements and strict regulation over animal welfare conflicts with its primary purpose of achieving profitable primary industries.¹⁸

2.15 Sentient: The Veterinary Institute for Animal Ethics (Sentient) noted that the organisation has, for some time been concerned about the 'inadequacies of the current animal welfare and related regulatory frameworks in Australia'.¹⁹ The organisation also raised specific concerns about the conflicts of interest which arise when the 'agencies responsible for administering and enforcing the legislation have, as their core business aims, the promotion and profitability of the industries they are attempting to regulate'.²⁰

2.16 Sentient conceded, however, that whilst the bill does not propose that the OAW would directly address the Department of Agriculture's existing conflicts of interest:

It is however, a powerful first step to manage these conflicts by providing oversight by an independent agency. Additionally, this would send a strong

15 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, p. 22.

16 See, for example, Voiceless, *Submission 8*, p. 5, World Animal Protection, *Submission 10*, pp 4–5 and Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, p. 6.

17 Animals Australia, *Submission 7*, p. 3.

18 Animals Australia, *Submission 7*, p. 3.

19 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 1.

20 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 1.

message that such oversight is needed in the jurisdictions. Ideally, of course, state and territory animal welfare legislation should be administered and enforced by independent agencies, such as IOAWs instead of departments of agriculture (as is currently the case).²¹

2.17 Lawyers for Animals (LFA) also indicated its support for the OAW being charged with undertaking inquiries and preparing reports about the activities and effectiveness of both the Live Export Standards Advisory Group (LESAG) and the Office of Animal Welfare Advisory Committee (OAWAC). LFA argued that:

... it is critically important that such review functions be performed by a body that is independent from animal-industry, as the Department of Agriculture cannot be, since it represents the interests of animal-industry to Government.²²

2.18 Voiceless also noted that under the current drafting of the bill, the OAW would report to and take direction from the Minister for Agriculture. Further, the Voiceless submission recommended that, in order for the OAW to be separated from the Department of Agriculture, and to avoid any further conflict of interest:

²³ ... it would be more appropriate for the IOAW and the CEO to report to either the Attorney-General's Department or the Department of the Environment.

2.19 BAWP, however, took a slightly different view regarding the Department of Agriculture's involvement in animal welfare. Director, Mr Graeme McEwen argued that, in terms of animal welfare:

We need to take producers and farmers with us – which is another reason, perhaps, it [animal welfare] should be left with the Department of Agriculture here in Australia. It can see that this is a process brought about with a Department of Agriculture that goes along with it as it responds to reports and inquiries of this Independent Office of Animal Welfare. It is a good thing. And we move forward. I think this bill gets it right.

...

For governments, or even opposition parties, it is good to say, 'We're not removing the teeth from the Department of Agriculture. We do want an animal welfare voice being factored into outcomes rather than, as at the moment, being completely ignored.' Consumers will respond to that. It needs to be explained to rural constituencies or regional constituencies that this, ultimately, is in their best interests, It is all about creating consumer confidence, because that is, ultimately, where the products go.²⁴

21 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, pp 1–2.

22 Lawyers for Animals, *Submission 6*, p. 7.

23 See, for example, Voiceless, *Submission 8*, p. 9.

24 Mr Graeme McEwen, Barristers Animal Welfare Panel, *Committee Hansard*, Monday, 14 September 2015, p. 16.

2.20 In response to the evidence received which raised concerns about the Department's potential conflict of interest (in relation to animal welfare), Deputy Secretary, Mr Phillip Glyde told the committee that:

Earlier today, you heard that you really cannot have the poacher as the gamekeeper and that there is a strong conflict between animal welfare outcomes and livestock profitability. We try in our submission to outline the reasons why we think it is not as simple as that. There is certainly a tension between welfare and profitability, but in our experience, if you improve animal welfare outcomes, you have increased productivity and you have improved competitiveness – for us, particularly, as we are a high cost producer and increasingly our markets are demanding good outcomes, whether it is sustainability in an environmental sense or good animal welfare practice or good supply chain management to ensure the quality and healthiness of our food products that we export. That is one of the keys: good animal welfare practice is a key to improve competitiveness. Finally, on sustainability, unless the Australian community knows that in the great majority of cases animal welfare is being looked after – if that is not nurtured – the community will lose faith in the ability of the industry to do that. So we think there are a lot of good reasons why industry and animal welfare outcomes are intertwined.²⁵

Clause 6 – Constitution

2.21 In line with concerns about the Department of Agriculture's potential conflict of interest, Sentient argued that rather than a CEO, the proposed OAW would be best served by an Independent Commissioner who would answer only to a Minister administratively, rather than by a CEO 'who is a servant of the government'.²⁶ In addition, Sentient argued that:

... the Minister must not be the Minister for Agriculture, given the conflict of interest that is inherent in this portfolio. The IC should report administratively to the Attorney General (AG), and if the IOAW is to be housed inside any department, it should be the AG's Department to ensure independence.²⁷

Clause 9 – Functions of the CEO

2.22 Voiceless argued that the bill should be amended to make clear that the OAW and the OAWAC are responsible for the coordination and development of the animal protection standards, including facilitating the conversion process of the Model Codes of Practice to Standards and Guidelines. It was argued that this would:

25 Mr Phillip Glyde, Department of Agriculture, *Committee Hansard*, Monday, 14 September 2015, pp 20–21.

26 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 3.

27 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 3.

... resolve the concerns around AHA [Animal Health Australia] continuing to control this process, and ensure appropriate minimum animal protection standards are set that accurately reflect community expectations.²⁸

2.23 Sentient told the committee that 'it would like to see the eventual establishment of statutory authorities similar to the IOAW at the state and territory levels'.²⁹ In the meantime, however, Sentient recommended that:

... the aims of this current bill be extended to allow the IOAW to harmonise animal welfare laws of the Commonwealth and states and territories, as proposed in subsection 9(c) of the bill. The IOAW would then also have the proposed role of a policy body and think tank that, via consultation and discussion, could influence a broader range of animal welfare issues than those for which the Commonwealth government has strict legislative responsibility.³⁰

Clause 10 – Minister may give directions to the CEO

2.24 PETA argued that whilst Clause 10 does note that any directions the Minister gives the CEO must be of a general nature only:

... the potential for abuse of this power does give us pause and we believe it is worth considering some further clarification or limit-setting in regards to this section.³¹

Clause 20 – Termination of appointment

2.25 PETA's submission expressed concern in relation to Clause 20, which provides that the Minister may terminate the appointment of the CEO for, among other things, 'misbehaviour':

PETA's view is that while an exhaustive list of scenarios that might qualify as misbehaviour of course cannot and should not be included in this section, an illustrative one characteristic in statutes containing such ductile terms should be considered, to inject some objectivity into the assessment.³²

Clause 26 – Membership of the committee

2.26 Sentient made several comments in relation to the membership of the OAWAC, including that the three members representing non-governmental animal welfare organisations should include representatives from RSPCA Australia and Animals Australia.

28 Voiceless, *Submission 8*, p. 10.

29 Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, p. 3.

30 Dr Rosemary Elliott, Sentient: the Veterinary Institute for Animal Ethics, *Committee Hansard*, 14 September 2015, pp 3–4.

31 PETA Australia, *Submission 2*, [p. 9].

32 PETA Australia, *Submission 2*, [p. 9].

2.27 It was also argued that because 'most animal and veterinary scientists are funded by industry, it may be difficult to find an independent person'.³³ Sentient therefore made the recommendation that this member should be 'an animal or veterinary scientist who is independent of industry and has demonstrated expertise in animal welfare research, teaching or advocacy, and has related higher qualifications'.³⁴

2.28 Sentient also recommended:

- the addition to the OAWAC of one member who represents the veterinary profession; and
- that a clause be added to ensure that no more than 50 per cent of members may be affiliated with industry to ensure a balance on the committee.

2.29 World Animal Protection also commented on the issue of OAWAC membership. The organisation indicated that whilst it is supportive of the structure proposed by the bill, it believes the OAWAC should be 'underpinned by an advisory and standard setting committee',³⁵ consisting of:

- members representing the Commonwealth, States and Territories;
- members representing industry interest, 1 for each production animal group; 1 for companion animals; 1 for aquatic animals; 1 for animals in the wild; 1 for animals in sport/on display; 1 for animals in research;
- members representing community interests – for each production animal group references above and one each for companion, aquatic, wildlife, sport and research;
- members representing academia and the law; and
- expert scientific and technical members.

Committee comment

2.30 The committee notes widespread disagreement, even among animal welfare groups, as to the structure and tone of any new animal welfare body

2.31 The committee also notes that the Australian Animal Welfare Strategy still exists and that the Department of Agriculture continues its involvement in the Commonwealth-state committee under AGMIN, and continues to have responsibility for monitoring the roles of government.

2.32 The committee therefore does not support the establishment of a statutory authority, the substantive functions of which are already achieved through existing mechanisms.

33 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 5.

34 Sentient: the Veterinary Institute for Animal Ethics, *Submission 5*, p. 5.

35 World Animal Protection, *Submission 10*, p. 6.

Recommendation

2.33 The committee recommends that the bill not be passed.

Senator the Hon. Bill Heffernan

Chair

Australian Greens' Dissenting Report

Introduction

1.1 The Greens *Voice for Animals (Independent Office of Animal Welfare) Bill* would help reduce the cruelty animals are subjected to.

1.2 The Greens are deeply committed to improving animal welfare across Australia. We share every compassionate Australian's repugnance at the cruelty and deep suffering that continues to be perpetrated on animals used for food, clothing, experiments, entertainment and profit.

1.3 The sickening cruelty borne by animals whose care and wellbeing is dependent on our commitment continues unabated, only revealed by courageous independent animal welfare investigators. Last night Animals Australia yet again exposed that cruel horror and terror to which we condemn our livestock in overseas markets.

1.4 Animals continue to suffer sickening cruelty under the Government's ineffective Export Supply Chain Assurance Scheme. Cattle cower and slowly die under the blows of sledgehammers, their throats sawn agape, eyes gouged, tendons slashed. Sheep are kicked, trussed and thrown onto car roofs or into baking car boots, butchered or buried alive.

1.5 Every year we send thousands of our animals overseas where they are brutalised and terrified in a festival of slaughter. We continue to condemn thousands of animals in our care to be debilitated in their own excrement on oven-baking ships, only to suffer a brutal and horrific death at the end of their journey.

1.6 Yet time and again, successive Australian governments and Ministers have turned a blind eye to the systemic abuse in the live export market and continue to make excuses for the suffering of these animals.

1.7 The Minister for Agriculture, charged with the care of our animals farmed and slaughtered under primary production frameworks, continues to claim the live export industry as humane asserting that the government is in control of supply chain processes. This is even as Animals Australia and other investigators bear witness to the suffering, terror and torture being meted out to our animals in those overseas markets and slaughterhouses.

1.8 Under the present supply chain system not a single company or person has been penalised. Not one banned.

1.9 Across Australia the systemic abuse of animals also continues, with no one authority across jurisdictions or at a Commonwealth level to independently assess, monitor, advise and report on the protection of animal welfare in Commonwealth regulated activities, free from the influence of a Minister and industry that seeks to use animals to maximise profits.

1.10 The Greens' *Voice for Animals (Independent Office of Animal Welfare) Bill 2015* seeks to establish an Office of Animal Welfare as an independent statutory

authority with responsibility, through its CEO, to monitor, investigate and report on the protection of animal welfare in Commonwealth regulated activities.

1.11 The bill seeks to remove the Minister charged with expanding animal production industries from his or her conflicted role of ensuring animal welfare.

1.12 The Greens refer to the second reading speech on the Bill and note the Majority Report already provides details of the bill as it currently stands.

1.13 The Greens thank the committee for its work on this inquiry. We especially thank the organisations who submitted to the inquiry, and those who attended inquiry hearings as witnesses.

The majority report

1.14 The Greens note the majority report recommends the bill not be passed, noting “widespread disagreement, even among animal welfare groups, as to the structure and tone of any new animal welfare body”.

1.15 The Greens disagree with this view, noting as does the majority report that “the vast majority of submissions received were from organisations which advocate an increased focus on animal welfare” and that “the majority of these submissions expressed support for the Voice for Animals (Independent Office of Animal Welfare) Bill 2015.”

1.16 The RSPCA summarises: “A national approach is needed to promote consistency and to develop a proactive strategy that addresses animal welfare issues before they become national headlines” and that “New Zealand, the United Kingdom, Canada and the European Union all have formally established expert animal welfare advisory bodies operating at the national or supra-national level. The absence of any equivalent body in Australia represents a lost opportunity for promoting better standards of animal welfare and is putting our industries at a competitive disadvantage when it comes to trade, market access and consumer confidence”.

1.17 It is not our intent to reiterate the majority report’s summary of submitters and witnesses to the inquiry suffice to say that without exception, all NGO submitters call for a strong and independent agency to oversee the protection of animal welfare, and to ensure the protection of animal welfare as the first priority.

1.18 We note that only the Department of Agriculture argued that there is no need for the establishment of an independent office of animal welfare, stating that its own functions and mechanisms are already sufficient in this regard.

1.19 The Greens disagree.

Dissenting Report Recommendations

1.20 We agree with NGO submitters that the bill should be amended to tighten its provisions to ensure independence from Ministerial interference; and to ensure its full jurisdiction over the issues identified by the submitters.

1.21 A key challenge of the bill is to ensure that its powers remain within the legal remit of the Commonwealth. We accept Animal Liberation’s statement that the “proposed bill does not go as far as the constitution allows” and that “there is

considerable power under, for example, corporations power to legislate on animal welfare.”

1.22 The Greens also agree with the wide concerns that the protection of animals deserves measures that have greater power for enforcement and investigation. This recommendation is echoed in other submissions also. A National Animal Welfare Authority is beyond the remit of this particular bill; however the Greens are strongly committed to further exploring such a model informed by consultation and advice from our animal welfare organisations.

1.23 The Greens believe the greatest challenge to effecting animal welfare protections in Australia is the lack of commitment and will by successive governments of both major political parties to prioritise the wellbeing of animals dependent on our care and sense of responsibility. An Independent Office of Animal Welfare would remove the political conflicts of interest, and would respond to the majority of Australians’ expectations that governments should ensure the health and wellbeing of the animals.

1.24 A number of improvements to the bill were identified by all NGO submitters and witnesses. The Greens thank them for this feedback and incorporate those suggested improvements in the following (numbered) recommendations:

Support the Bill

- 1. That the bill be supported and passed with amendments that ensure the following:**

Consultation

1.25 The RSPCA noted the need for full consultation in the implementation of the bill. The Greens agree and recommend:

- 2. That in the implementation of the bill and setting up of the Independent Office for Animal Welfare, states and territories and key stakeholders including animal welfare organisations, non-industry animal scientists, independent veterinary physicians are consulted to ensure the establishment of a national approach to animal welfare policy and standards development.**

Bill Title

1.26 Sentient recommends expanding the Bill’s title to ensure the full aims of the Independent Office of Animal Welfare (IOAW) are reflected:

- 3. That the bill’s title be expanded thus: “A bill for an Act to establish a Commonwealth statutory authority with responsibility for protecting animal welfare in Commonwealth regulated activities, and for related purposes, and to assist in creating a more consistent and effective Australian animal welfare system.**

Definitions

1.27 Sentient also noted that a number of terms in the bill should be defined and included in the Bill's Definitions:

- 4. That following terms referred to in Section 9 of the bill be defined in the Bill's Definitions: Live Export Advisory Group; Australian Animal Welfare Strategy; ASEL; ESCAS; the Department.**

1.28 PETA also expressed concerns that under section 20 of the bill, the ability of the Minister to terminate the appointment of the CEO for, amongst other things "misbehaviour", risks the dismissal of a CEO who refuses to comply with unreasonable or bad faith directions by the Minister.

1.29 The Greens' suggested amendment clarifies and limits the type of directions a Minister can make to the CEO, and includes a definition of "misbehaviour".

- 5. That the term "misbehaviour" is defined in the bill to ensure refusal by a CEO to comply with unreasonable directions by the Minister does not constitute reason for termination of employment under Section 20.**

Specifying the IOAW is separate from the Department of Agriculture and its Minister.

1.30 As currently drafted the bill does not specify the Minister to whom the IOAW and its CEO reports. Whilst this was in recognition that departmental and Ministerial responsibilities shift with changing governments, all NGO submitters were unequivocal in their concern about the serious conflicts of interest between the Department of Agriculture and its Minister, and industry's disproportionate and oppositional influence in the pursuit of greater animal welfare protections.

1.31 Voiceless noted that "under the current drafting of the Bill, the IOAW still reports to and takes direction from the Minister for Agriculture."

1.32 Animals Australia reiterated those submitters who recommended "that unless the Bill is amended to remove and effectively address the conflict of interest and disproportionate industry influence that currently exists, the Bill will not achieve its intended purpose."

1.33 The Greens recognise this risk and agree that the bill should specify the Minister responsible to whom the IOAW and its CEO will report, with the Attorney General's Department the commonly recommended alternative.

- 6. That the bill be amended to specify that the IOAW and its CEO sits within the Department of the Attorney General under the responsibility of the Attorney General.**

Independent Commissioner

1.34 Concerns about the ability of the IOAW's CEO to remain independent from Ministerial political interference was expressed by all NGO submissions, with Sentient summarising the role of a CEO as a "servant of the government" and thus susceptible to the government of the day's political interference. The Greens accept Sentient's suggestion that the IOAW would be best served by an Independent

Commissioner (IC), noting that role has a natural fit with the alternative model proposed by Animal Liberation.

1.35 The Greens commit to including this consideration in future iterations of the IOAW along with consideration of investigative and enforcement powers,

Appointment of the CEO

1.36 It is noted that a conflict of interest potentially exists should the CEO engage in any paid employment outside the duties of their office. The Greens also accept that the CEO should not detract from the position itself by engaging in paid employment outside the position:

- 7. That Section 16 be amended to remove the ability for the Minister to approve the CEO engaging in paid employment outside the duties of his or her office, by removing the words “without the Minister’s approval”.**

Disclosures of interests

1.37 Section 17 of the bill should be amended to ensure the CEO does not have any actual or perceived conflicts of interest:

- 8. Amend Section 17: The CEO must not have commercial interests in any animal industry or trade regulated by the Department of Agriculture or any related animal industry.**

The Minister may give directions

1.38 There was also common concern about the ability for the Minister to give written directions to the CEO in Section 10 of the bill.

1.39 PETA noted that as worded, this leaves “potential for abuse by the Minister to undercut the core missions of the Office given the CEO is obliged to comply with no explicit avenue of administrative appeal contemplated in the Act.”

- 9. That Section 10 of the bill be amended to ensure that any directions given by the Minister to the CEO are administrative only; that they do not interfere in any way with ability of the IOAW and its CEO to fully and effectively discharge its functions and aims; and that all written directions are made publically available.**

Standards and Guidelines

1.40 Voiceless, BAWP and Animals Australia mirrored other submitter’s concerns that Animal Health Australia (AHA) continues to control the conversion process of the Model Codes of Practice to Standards and Guidelines, given that the AHA is controlled by governments and major national livestock industry organisations. Voiceless noted that “animal welfare is not included in AHA’s state objectives, mission, vision or corporate values” and that none of its 32 members are animal protection organisations.

- 10. That the bill is amended to ensure the IOAW and its CEO is responsible for the coordination, development and progression of the**

animal protection standards, including the conversion of the Model Codes of Practice.

1.41 Sentient also noted that reference to Standards and Guidelines is needed in the bill:

11. That the bill is amended to add reference to “Standards and Guidelines” where reference to “Model Codes of Practice” exist” in the bill.

Functions

1.42 Sentient notes that the term “Livestock Standards functions” is potentially confusing given it may be taken to refer to the ‘Land Transport Standards’, the ASEL, or the proposed new Animal Welfare Standards and Guidelines for sheep and cattle. Further, the term does not allude to Commonwealth legislation regulating export abattoirs and animals in quarantine. Animals Australia also noted the need for independently prepared compliance reports in the live export area.

12. That the bill be amended to replace the term “Livestock Standards” with “Regulatory functions” (s9 Functions of the CEO, *CEO’s functions*)

13. That CEO functions be amended to include reviewing and monitoring live export, live export abattoirs and animals in quarantine, and preparation of compliance reports following alleged or self-reported breaches throughout the live export chain.

1.43 The Greens also agree with Sentient’s concern that the current wording in s9 *Reporting Functions* is not broad enough and accept the suggested amendments that they make.

1.44 Voiceless recommends the amendment of the Reporting Functions and Standard-setting functions assist in remedying the identified lack of independent science and research in animal protection, and allow for independent science to be utilised in the standard-setting process.

14. That the bill clarify that the IOAW and its Advisory Committee also have responsibility for commissioning independent scientific research into specific animal protection areas that may be used in the Standard-setting process.

15. Development and progression of general animal welfare policy under the Australian Animal Welfare Strategy

1.45 Humane Research Australia reminded the Committee of the often unexamined suffering and cruelty inflicted on animals used in research, noting that “transparency and the exchange of information is essential” to limiting the use of animals in research and teaching by Refining, Reducing and Replacing animal use in research. This transparency is completely lacking in this area and the Greens strongly agree that the IOAW should include this area in its functions.

16. That the bill be amended to ensure the IOAW's functions include the area of animal research and experimentation: to develop a nationally coordinated centralised reporting system on animal use statistics; a central public database collating non-technical summaries of all research projects using live animals to avoid duplication of animal-use research, and to make available all unpublished animal-use research and their results; and to develop nationally consistent decision-making and approval processes for animal-use in research.

1.46 Lawyers for Animals raised the issue of a need for a central national repository for the collection and dissemination of prosecution summaries and outcomes from all agencies involved in prosecuting offences relating to animal cruelty or other animal offences. This will inform consideration of the effectiveness of enforcement of animal laws in Australia and to allow lawyers to prepare submissions.

17. Development of a nationally coordinated repository of all prosecution summaries and outcomes from all agencies involved in prosecuting offences relating to animal cruelty or other animal offences.

Investigation and Enforcement Functions

1.47 The Greens strongly agree with a number of submissions recommendations that the IOAW should also have monitoring and enforcement functions with respect to Commonwealth animal protection laws, particularly in relation to live animal exports.

1.48 Without the powers of investigation and enforcement, the status quo will continue with industry and Departments prevaricating and excusing the terrible systemic cruelty that continues to be exposed by under-funded independent animal welfare organisations, or by underfunded and under-resourced animal welfare organisations such as the RSPCA.

1.49 The recent move by state governments and Coalition Private Members Bills to punish those independent witnesses and whistle-blowers of brutal and neglectful treatment of animals is an end result of the habitual denigration of independent animal welfare investigators as “just activists”.

1.50 This is a complex area of law that intersects with other federal and state and territory investigative and enforcement laws, and requires and its own consideration that is beyond the resources of this Dissenting Report to address with the detail and attention it deserves.

1.51 We refer to previous consideration of an agency fully empowered to not only conduct investigations, but also undertake enforcement and prosecution activities. We recommend the following in the interim:

18. That the IOAW have authorised officers that have statutory powers to conduct investigations and inspections in relation to Commonwealth animal welfare matters, including for example, the power to inspect and investigate matters relating to live animal export.

The committee

1.52 It was commonly submitted that membership of the committee needs to be amended to ensure a balance of interests and appropriate qualifications are represented. The Greens commit to exploring this further in the future, and accept the following recommendations in this iteration of the bill.

19. That section 26 be amended:

- a) To include 1 member representing the veterinary profession**
- b) That any animal or veterinary scientist member should be independent of industry and has demonstrated expertise in animal welfare research, teaching or advocacy and holds related higher qualifications.**
- c) That all members should demonstrate current expertise in animal welfare issues and related research within their areas of expertise.**
- d) That no more than 50% of members may be affiliated with animal industries.**
- e) That the members representing non-governmental animal welfare organisations include one of each of the national NGOs that undertakes investigations and enforcement activities – currently Animals Australia and RSPCA.**

Senator Lee Rhiannon

Australian Greens

Appendix 1

Submissions received

| Submission Number | Submitter |
|--------------------------|--|
| 1 | Humane Research Australia Inc |
| 2 | PETA Australia |
| 3 | RSPCA Australia |
| 4 | Animal Liberation |
| 5 | Sentient: The Veterinary Institute for Animal Ethics |
| 6 | Lawyers for Animals |
| 7 | Animals Australia |
| 8 | Voiceless |
| 9 | Department of Agriculture |
| 10 | World Animal Protection |

Appendix 2

Public hearings and witnesses

14 September 2015, Canberra, ACT

- BEYNON, Ms Nicola, Head of Campaigns, World Animal Protection
- CLEGG, Dr Narelle, Assistant Secretary, Live Animal Exports, Exports Division, Department of Agriculture
- COOPER, Ms Barbara, Acting Assistant Secretary, Meat Exports, Exports Division, Department of Agriculture
- ELLIOTT, Dr Rosemary, President, Sentient, The Veterinary Institute for Animal Ethics
- FREEMAN, Ms Fran, First Assistant Secretary, Agricultural Policy Division, Department of Agriculture
- GIUFFRE, Mr Emmanuel, Legal Counsel, Voiceless
- GLYDE, Mr Phillip, Deputy Secretary, Department of Agriculture
- MARTIN, Dr Robyn, Assistant Secretary, Animal Health Policy Branch, Biosecurity Animal Division, Department of Agriculture
- McEWEN, Mr Graeme James, Director, Barristers Animal Welfare Panel
- SHERIDAN, Mr Allan David, Director, Animal Biosecurity Branch, Biosecurity Animal Division, Department of Agriculture

