

20 July 2022

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To whom it may concern,

Draft Animal Welfare Act Amendment Bill 2022

Thank you for the opportunity to comment on the *Draft Animal Welfare Act Amendment Bill 2022*. We represent six of Australia's leading animal protection organisations with a combined supporter base of over 2 million people, many of whom reside in Tasmania.

The Bill contains some positive improvements to the *Animal Welfare Act 1993*, including banning pronged collars, providing an alternative verdict for aggravated cruelty and improving the powers of inspectors.

However, the Bill misses a number of important opportunities to bring Tasmania into line with the standards of modern and contemporary animal welfare law.

Over the past decade, there have been significant advancements in our scientific understanding of the welfare of animals and their sentience, and community expectations about the treatment of animals has evolved accordingly. Polling by Roy Morgan Research in March this year found that:

- 98% of Australians consider animal welfare to be important
- 94% support laws that ensure animals are provided with a good quality of life
- 97% support laws that ensure animals are protected from cruel treatment
- 80% support government doing more to protect animal welfare
- 74% support the creation of an independent body to oversee animal welfare
- 85% support animal welfare laws reflecting community expectations and best-available science.¹

¹ Roy Morgan Research, Attitudes to Animal Welfare, March 2022.

In our submission we offer recommendations for how the Bill can be improved to create a more robust animal welfare framework, with stronger governance and institutional arrangements, consistent decision-making principles, and a formal role for independent expert advice.

The recommendations include recognising animals as sentient beings, establishing a Tasmanian Animal Welfare Authority, improving the membership composition of the Animal Welfare Advisory Committee, and strengthening the process for making animal welfare standards and guidelines to ensure they are based on contemporary science and consistent with the duties enshrined within the Act.

We also provide brief comments on each of the proposed amendments under the Bill.

Although it is encouraging to see the Tasmanian Government initiating animal welfare law reform, this review process presents a unique opportunity to set the bar higher to meet the animal welfare standards Tasmanians expect.

We hope our comments will be helpful in achieving this objective and look forward to reviewing the revised Bill in due course. Please do not hesitate to contact us if we can be of any further assistance.

Yours sincerely,



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About the Australian Alliance for Animals

The Australian Alliance for Animals is a national charity leading a strategic alliance of Australia's key animal protection organisations to achieve systemic change for animals. Through our six core member organisations, we have a combined supporter base of over two million people.

Learn more about our work on our website: www.allianceforanimals.org.au

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In the spirit of reconciliation, we acknowledge the Traditional Custodians of country throughout Australia and their enduring connections to land, sea and community. We pay respect to their Elders past and present.

Draft Animal Welfare Act Amendment Bill 2022 (Tasmania)

20 July 2022

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Introduction

The *Draft Animal Welfare Act Amendment Bill 2022* ('Bill') contains some positive improvements to the *Animal Welfare Act 1993* ('Act'), including banning pronged collars, providing an alternative verdict for aggravated cruelty and improving the powers of inspectors.

However, the Bill misses a number of important opportunities to bring Tasmania into line with the standards of modern and contemporary animal welfare law.

Over the past decade, there have been significant advancements in our scientific understanding of the welfare of animals and their sentience, and community expectations about the treatment of animals has evolved accordingly.

Polling by Roy Morgan Research in March this year found that:

- 98% of Australians consider animal welfare to be important
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- 80% support government doing more to protect animal welfare
- 74% support the creation of an independent body to oversee animal welfare
- 85% support animal welfare laws reflecting community expectations and best-available science.¹

We offer seven key recommendations for how the Bill can be improved to create a more robust animal welfare framework, with stronger governance and institutional arrangements, consistent decision-making principles, and a formal role for independent expert advice.

The recommendations include recognising animals as sentient beings, establishing a Tasmanian Animal Welfare Authority, improving the membership composition of the Animal Welfare Advisory Committee, and strengthening the process for making animal welfare standards and guidelines to ensure they are based on contemporary science and consistent with the duties enshrined within the Act.

We also provide brief comments on each of the proposed amendments under the Bill.

Although it is encouraging to see the Tasmanian Government initiating animal welfare law reform, this review process presents a unique opportunity to set the bar higher to meet the animal welfare standards Tasmanians expect.

We hope our comments will be helpful in achieving this objective and look forward to reviewing the revised Bill in due course.

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Recommendations

Recommendation 1

Amend the Bill to include express recognition of the sentience of animals and their intrinsic value within a new objects clause.

Recommendation 2

That the Bill establish a Tasmanian Animal Welfare Authority with responsibility for administering the legislation.

Recommendation 3

That the Bill recognise the role of independent expert advice by amending s 39 of the Act to require the inclusion of members with expertise relevant to the administration of the Act and make the committee's advice and reports public to improve transparency.

Recommendation 4

Introduce additional requirements for the making of animal welfare standards and guidelines, requiring them to be based on contemporary scientific knowledge/technology and advice from the Animal Welfare Advisory Committee, as well as consistent with sections 6-8 of the Act, and tabled in Parliament.

Recommendation 5

Reframe the test under s 8 in terms of necessity, substituting the current phrasing of "unreasonable and unjustifiable" with the term "unnecessary", and including further guidance for the courts on how to determine when an act or omission causes unnecessary pain by outlining relevant considerations, including:

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Recommendation 6

Amend the Bill to ensure that CCTV is required for all slaughter facilities in the state.

Recommendation 7

Amend the Bill to include public reporting obligations for the Department of Natural Resources and Environment (DNRE) and RSPCA Tasmania relating to their compliance monitoring and enforcement activities, including requiring DNRE to report to parliament on such activities.

Opportunities for reform

1. Recognise animal sentience in an objects clause

The Bill misses the opportunity to insert an objects clause into the Act, recognising (amongst other matters) the sentience of animals subject to the legislation.

It is advisable for animal welfare legislation to be guided by a set of comprehensive objectives which outline the key purposes the legislation seeks to achieve. This is the norm throughout Australian state/territory animal welfare legislation, with objects clauses generally specifying that the purpose of the legislation is to prevent cruelty to animals, provide community education, and promote animal welfare.

An objects clause should be inserted into the legislation recognising that animals are sentient beings with intrinsic value. By recognising animal sentience, the legislation will provide guidance on *why* protecting the welfare of animals is important. Modern societies have enacted animal welfare laws *because* animals are sentient.

In a previous review of the Act, sentience recognition was rejected on the grounds that it could have "... unintended consequences in relation to animals with high levels of sentience or those considered to be at the lower end of the scale, depending on how such a statement is interpreted."² These concerns have not been borne out by the operation of legal recognition of animal sentience in New Zealand and the ACT.³

The background information about the Bill published on the Department's website states that "the Department is aware that there is public interest in the inclusion of the concept of 'sentience' for animal welfare" but then goes on to state that legal recognition of sentience in other jurisdictions is "largely symbolic and not enforceable."⁴ This mischaracterises the role of legislative objects provisions. Objects clauses are not designed to be directly enforceable. This does not mean they are merely symbolic. There are four key benefits to explicitly recognising sentience under the Act, set out below.

1.1 Improving legislative consistency

One of the core deficiencies of the AWA concerns the arbitrary nature of the standards of care afforded to different species of animals based on the context in which they are used. The current AWA lacks a consistent underlying principle to guide the interpretation and application of the Act and its subordinate instruments. This results in standards of care which are

² Department of Primary Industries, Parks, Water and Environment (Tas), 'Animal welfare act review report and recommendations' (2013) 75.

³ *Animal Welfare Act 1992* (ACT), s.4A.

⁴ Biosecurity Tasmania, 'Draft Animal Welfare Act Amendment Bill' 20 June 2022, <https://nre.tas.gov.au/biosecurity-tasmania/animal-biosecurity/animal-welfare/legislation-standards-guidelines/animal-welfare-act/draft-animal-welfare-act-amendment-bill>

significantly determined by the most influential stakeholder groups at the time of drafting, rather than by reference to animal welfare science and the needs of animals.

This in turn leads to an incoherent legislative structure in which subordinate legislation (including regulations and animal welfare standards and guidelines) contradicts the duties and offences outlined in the enabling legislation. Not only is this undesirable from a legislative drafting perspective, but it is a key contributor to the uncertainty, confusion, and general dissatisfaction many people have with our animal welfare laws today. The Bill presents an opportunity to address this deficiency. Recognising animal sentience as a cornerstone principle of the legislation is the first step towards creating a more principled, consistent, and coherent legislative framework; one in which respect for the sentience of animals runs through the entire legislative regime, informing the interpretation and application of the Act and the administrative decisions and standards and guidelines made under it (see section 4 of this submission for further comments on making animal welfare standards and guidelines).

1.2 Sentencing offenders

Legislative purposes are used by judges and magistrates to inform the interpretation of legislation, particularly in cases of ambiguity. In the absence of express recognition of animal sentience, the Act provides no further guidance as to the reasons why promoting animal welfare and preventing cruelty are important. Without such guidance, judicial officers are left to form their own conclusions, which can vary from an instrumental view (where animal welfare matters only to the extent that it benefits humans) to an intrinsic view (where animal welfare matters because it matters to the animal).

These differing interpretations inform the way animal cruelty offences are conceptualised by judges and magistrates, including their relative seriousness, which in turn can affect sentencing outcomes. Traditionally, judicial officers have lent towards the instrumental view where animal cruelty matters are seen as simple misdemeanours; a form of anti-social, deviant conduct that should be discouraged but is nevertheless at the lower end of the scale of seriousness, meriting relatively minor penalties. The animal is seen not as a victim of the offending conduct, but simply as an element of the offence. This risks trivialising serious offences of animal cruelty that are of great concern to the community. Simply increasing maximum penalties (as happened in 2015) will not solve this problem, as judges and magistrates still retain ultimate discretion in determining what penalties are applied in a given case. If animal cruelty offences are conceptualised as minor offences, maximum penalties will not be applied, no matter how heinous the offending conduct may be.

Recognising animal sentience in the objects of the legislation signals to judicial officers the underlying reasons why promoting animal welfare and preventing cruelty is important. This can in turn encourage judicial officers to view the offences in a different light; one in which abused animals are seen as victims of the offending conduct, leading to more informed sentencing

decisions that better reflect the community's views on the seriousness of animal cruelty offences.

1.3 International reputation

Recognising animal sentience is also important for Australia's international reputation. As more countries include recognition of animal sentience in their animal welfare laws, the absence of such recognition in Australia becomes increasingly apparent. As of this year, at least 19 jurisdictions have included such recognition (see Appendix for a full list of jurisdictions). Following its departure from the EU, the United Kingdom has introduced an *Animal Sentience Bill* to ensure it continues to recognise animal sentience. The Bill also establishes a committee to report to government on the impact of various government policies on "the welfare of animals as sentient beings."⁵

Other Australian jurisdictions are also moving in this direction. The first Australian jurisdiction to recognise animal sentience in law was the ACT in 2019.⁶ The Victorian Government has also flagged its intention to recognise animal sentience in the current review of its POCTAA,⁷ and the WA Government has recently endorsed a recommendation to amend the objects of the *Animal Welfare Act 2002* "to expressly recognise that animals are living beings, able to perceive, feel, and have positive and negative experiences."⁸ While this does not include the word 'sentience', it is in essence, the definition of sentience.

The lack of express legislative recognition of animal sentience has affected Australia's international ranking on animal welfare. Australia was recently given a 'D' grade under the World Animal Protection Index,⁹ the only index of its kind in the world, which many NGOs, multi-national food companies, institutional investors, and government advisors draw on for guidance on a nation's animal welfare record. As an advanced and economically prosperous nation with significant animal-based industries, it is unfortunate that Australia's ranking is so low compared with equivalent nations. Recognising animal sentience is one important step towards improving our international reputation.

1.4 Trade and market access

Australia's low animal welfare ranking will increasingly have consequences for trade and market access. The Australian Government is currently negotiating a Free Trade Agreement (FTA) with the EU and recently concluded an FTA with the UK. Each of these markets is extremely sensitive

⁵ *Animal Welfare (Sentience) Bill* (UK), s.2, <https://bills.parliament.uk/bills/2867>

⁶ *Animal Welfare Act 1992* (ACT), s.4A.

⁷ Premier of Victoria, Victorians in favour of new Animal Welfare Act, 29 April 2021, <https://www.premier.vic.gov.au/victorians-favour-new-animal-welfare-act>

⁸ Department of Primary Industries and Regional Development WA, Government response to the Report of the Independent Review of the Animal Welfare Act 2002, p.3, <https://www.agric.wa.gov.au/animalwelfare/review-animal-welfare-act-2002-government-response>

⁹ Animal Protection Index, Australia, World Animal Protection, 2020, <https://api.worldanimalprotection.org/country/australia>

to animal welfare, evidenced by the insistence of both EU and UK officials on including prominent animal welfare provisions in the respective agreements.

The Australia-UK FTA was signed on 17 December 2021 and contains a dedicated chapter on animal welfare (Article 25.1).

The opening clause of the chapter states the following:

1. *The Parties recognise that animals are sentient beings. They also recognise the connection between improved welfare of farmed animals and sustainable food production systems.*

The EU has also foreshadowed its desire for animal sentience to be recognised in the agreement it is negotiating with the Australian Government. Evidently, recognising animal sentience is now part of Australia's trade policy. Expressly recognising animal sentience under the AWA would provide further assurances to trading partners that Tasmania takes animal welfare seriously and has enacted modern animal welfare laws that reflect contemporary scientific knowledge and community expectations.

Recognising animal sentience is a central feature of modern animal welfare law. It will improve the functioning of the legislation and will position Tasmania well for meeting future community and trade expectations.

Recommendation 1

Amend the Bill to include express recognition of the sentience of animals and their intrinsic value within a new objects clause.

2. Establish a Tasmanian Animal Welfare Authority

Effective administrative and enforcement arrangements are key components of modern animal welfare law. Animal welfare regulation is becoming more complex and specialised as community demand continues to grow for greater assurances across all animal-based industries. The Tasmanian community will increasingly expect government to provide more robust standards, stronger compliance monitoring and enforcement services, and greater transparency and public reporting on such services. To meet these increasing demands, the Bill should establish an Animal Welfare Authority to undertake key regulatory and administrative responsibilities under the Act.

Tasmania has multiple enforcement entities for the AWA including the Police, RSPCA Tasmania, and the Department of Natural Resources and Environment (DNRE), which currently has ultimate administrative responsibility for the legislation. While DNRE has strong technical capacity in livestock production, it is not an appropriate custodian for the state's animal welfare law and

policy because of the inherent tensions that arise with its broader organisational agenda of promoting the profitability and productivity of the state's livestock industries.

DNRE is ultimately an industry promoting agency. It is an industry enabler and service provider. The primary performance measures utilised by the Department relate to increases in productivity and gross value of primary production.¹⁰ To be clear, no criticism is made of this objective. There is a legitimate role for government in promoting the productivity of industry, which, if done appropriately, is in the public interest. Problems arise, however, when industry-promoting departments are delegated with regulatory responsibilities that conflict, or have the potential to conflict, with their industry-promoting agenda. As the Australian Productivity Commission noted in the context of animal welfare regulation:

*Representing the interests of the industry that a government department is tasked with addressing is not of itself a concern, it is consistent with its objective. However, issues can arise when that department is also responsible for implementing a regulation that has broader community interests that may conflict with those of the industry.*¹¹

While animal welfare and farm productivity may be mutually compatible on basic measures of welfare, such as the provision of sufficient food and water or protection from predation, there are many instances where improvements to animal welfare may come at a cost to productivity and profitability. Examples include reducing stocking densities in intensive livestock operations, replacing extreme confinement systems with larger group housing or free-range systems, administering pain relief during invasive husbandry procedures, or increasing the availability and provision of veterinary services. All of these factors improve animal welfare but can impact industry productivity and profitability. As the Productivity Commission noted, "animal welfare and production and profitability do not always go hand-in-hand."¹²

When a department is responsible for managing policy on animal welfare standards within livestock industries, including critical issues like housing systems and stocking densities, and at the same time is responsible for meeting KPIs of increasing the productivity and gross value of those very same industries, it is faced with conflicting priorities. Of course, government departments often have to balance competing interests and responsibilities. This is not unusual but problems arise when there is a significant disparity in the level of priority placed on each competing responsibility, making it difficult, if not impossible, to arrive at a reasonable balance.

As public sector governance expert Professor Eric Biber has noted, government agencies will systematically underperform on secondary goals that conflict with the achievement of their

¹⁰ Department of Primary Industries, Parks, Water and Environment (Tasmania), 'Annual Report 2021' <https://nre.tas.gov.au/Documents/DPIPWE%20Annual%20Report.pdf>

¹¹ Productivity Commission, Regulation of Australian Agriculture, No.79, 2017, p.225 <https://www.pc.gov.au/inquiries/completed/agriculture#report>

¹² Ibid, 203.

primary goals.¹³ In particular, agencies will pursue short term economic goals that are easy to measure at the expense of more elusive social goals in the public interest.¹⁴ Growth in the productivity and gross value of Tasmanian livestock industries can be readily quantified and is easy to measure. Improvements in animal welfare outcomes, and community confidence in such, are not so easy to measure - as demonstrated by DNRE's latest Annual Report, which contains definitive performance measures relating to growth in the value of production for several primary industries but no performance measures relating to protecting or improving animal welfare outcomes.¹⁵ This is despite animal welfare being listed as a "priority" in the Department's 2018-2022 Corporate Plan.¹⁶

Animal welfare law and regulation is becoming increasingly complex and specialised. Administration and enforcement requires a focused, dedicated, and independent approach which is best delivered through the establishment of an independent statutory authority dedicated to animal welfare. This has recently been recognised by the federal Australian Labor Party in adopting a policy to establish an independent Inspector-General of Animal Welfare.¹⁷

We recommend the Bill be amended to establish an independent Animal Welfare Authority with responsibilities for:

- overseeing the appointment and training of inspectors
- supporting the Animal Welfare Advisory Committee
- administering the licensing regimes for research establishments
- participating in the development and adoption of animal welfare standards and guidelines
- administering standards and guidelines compliance monitoring programs
- determining animal forfeiture applications
- the approval of official forms for use under the Act
- the recognition of interstate prohibition orders
- publicly reporting on compliance and enforcement activities.

Under such an arrangement, DNRE would continue to play an important role in the provision of technical advice and assistance, industry extension services, and informing the development of policy, but it would not be wholly responsible for the administration of the state's animal welfare laws and policy. Likewise, current entities such as RSPCA Tasmania would continue to play their

¹³ Eric Biber, 'Too Many Things to Do: How to Deal with the Dysfunctions of Multiple-Goal Agencies' (2009) 33 *Harvard Environmental Law Review* 1.

¹⁴ *Ibid.*

¹⁵ Department of Primary Industries, Parks, Water and Environment (Tasmania), 'Annual Report 2021' <https://nre.tas.gov.au/Documents/DPIPWE%20Annual%20Report.pdf>

¹⁶ Department of Primary Industries, Parks, Water and Environment (Tasmania), 'Corporate Plan 2018-2022' <https://nre.tas.gov.au/Documents/DPIPWE%20Corporate%20Plan.pdf>

¹⁷ Australian Labor Party, Strengthening Animal Welfare, accessed 10 July 2022, <https://www.alp.org.au/policies/strengthening-animal-welfare>

enforcement role but, instead of reporting to DNRE, they would report to the Animal Welfare Authority.

The portfolio location of the Authority would be a matter for the government of the day. As agriculture portfolios will be faced with the same competing responsibilities, allocating the Authority to the agriculture portfolio would be problematic. While the enabling legislation could protect the Authority's independence to some extent, ideally it would be situated within a portfolio that did not give rise to the same competitive tensions. Much of the funding for the Authority could be sourced via a reallocation of existing resources within DNRE as the proposed responsibilities and functions of the Authority are drawing from those already provided for under the AWA. That said, animal welfare regulatory and compliance services are chronically underfunded and are in need of substantial increased investment.

Establishing a Tasmanian Animal Welfare Authority not only makes sense from a regulatory perspective but will come with additional benefits of improving public confidence in the administration and enforcement of animal welfare law. Recent polling by Roy Morgan Research in March 2022 found that 74% of Australians supported the creation of an independent body to oversee animal welfare. Social research commissioned by the federal Department of Agriculture in 2018 also noted that members of the public raised concerns over the perception of conflicting interests when "the same regulatory body responsible for the promotion for the agricultural industry was also responsible for ensuring animal welfare standards."¹⁸ Such perceptions are only likely to increase unless more investment is made in meeting the expectations of the community. The establishment of a Tasmanian Animal Welfare Authority would send a strong signal that the Tasmanian Government takes animal welfare seriously and this would be supported by the community.

Recommendation 2

That the Bill establish a Tasmanian Animal Welfare Authority with responsibility for administering the legislation.

3. Ensure adequate expertise in membership of the Animal Welfare Advisory Committee

Independent expert advice is a critical component of developing informed animal welfare policy and standards. The AWA outlines the membership composition of the Tasmanian Animal Welfare Advisory Committee (AWAC) under s 39. Although members are drawn from a diversity of institutions, the Committee would benefit from the mandatory inclusion of members with specific expertise relevant to the administration of the Act. For example, mandating the

¹⁸ Futureye, Australia's Shifting Mindset on Farm Animal Welfare, 2018, p.16.

inclusion of members with expertise in the areas of animal welfare advocacy, animal welfare science, public policy and law. At present, there is a presumption that members representing the various organisations and industries listed under s 39 will possess the requisite expertise. Although this may be the case in many instances, it would be preferable for the Act to expressly require a balanced membership with an appropriate expertise base.

We also recommend that the Act require that the advice and reports of AWAC be made public to improve transparency of the framework.

Recommendation 3

That the Bill recognise the role of independent expert advice by amending s 39 of the Act to require the inclusion of members with expertise relevant to the administration of the Act and make the committee's advice and reports public to improve transparency.

4. Improve the development of animal welfare standards and guidelines

Animal welfare standards and guidelines comprise an integral part of the AWA's legislative framework, governing the welfare of millions of animals in Tasmania - far more than the number of animals that benefit from the duty of care provisions outlined under the AWA. Accordingly, what is written in the prescribed standards and guidelines will be arguably more important for animal welfare outcomes than the content of the principal legislation.

Despite the central role played by the standards and guidelines in achieving the proposed legislative purposes, the AWA is silent on the process and criteria for their creation and adoption. Section 44A simply provides that regulations may prescribe mandatory standards, and s 44B provides that the Minister, post consultation with AWAC, may approve advisory guidelines on animal welfare. Section 50 states that the Governor may make regulations for the purposes of the AWA, and provides a non-exhaustive list of topics about which regulations can be made.

The lack of criteria and guidance on process allows for the adoption of standards and practices that may enshrine cruel and harmful practices and contradict the purposes of the legislation. In fact, s 50 (3) states that regulations may exclude the operation of any provision under the Act, which can be used for example to facilitate exclusion of the general cruelty prohibition. Best practice modern animal welfare law establishes decision-making criteria for the adoption of animal welfare standards, guidelines and industry codes to ensure consistency and accountability in the process of development. We refer to Part 5 and s 183A of the New Zealand *Animal Welfare Act 1999* (NZAWA) which set out in detail the process for how Codes of Welfare and regulations are to be made under the NZAWA.

Part 5 outlines the involvement of the National Animal Welfare Advisory Committee in the preparation of the codes, public notification and consultation requirements, and factors that must be considered including consistency with the purpose of the legislation, public and stakeholder submissions, relevant scientific knowledge, and available technology. Proposed codes are also required to be tabled in the House of Representatives. Section 183A states that regulations cannot prescribe standards that do not fully meet the legislation's duty of care obligations. Exceptions may be granted to avoid negative impacts on industry but only for a period of 10 years before the regulations must be brought into line with the principal Act's key duties and obligations.

Such provisions ensure the process for making industry codes of practice, under which the welfare of millions of animals will be determined, is consistent and accountable, which ultimately leads to a more robust and coherent legislative framework. The Bill should establish similar decision-making criteria to ensure that standards and guidelines adopted under the AWA are developed in an equally consistent and accountable manner.

We recommend that the Act be amended to include the following subsection within both sections 44A and B:

Animal welfare [*standards/guidelines*], must be:

- (a) based on good practice, contemporary scientific knowledge and technology, and advice from the Animal Welfare Advisory Committee; and
- (b) consistent with sections 6, 7 and 8 of the Act.

We further recommend for consistency amending s 50 (1) to include a requirement that regulations made by the Governor for the purposes of the Act 'are not inconsistent with sections 6, 7 and 8 of the Act.' In addition to this, the Bill should include a requirement for both standards and guidelines to be tabled in Parliament.

While some livestock welfare standards are created at a national level in consultation with all state and territory jurisdictions, this is not a barrier to establishing decision-making and procedural criteria in Tasmania, as national standards still need to be adopted under Tasmanian law. Decision-making criteria prescribed under Tasmanian legislation could be satisfied through the national process or by the Tasmanian Government taking any additional steps required to satisfy the Act's requirements prior to adoption.

Recommendation 4

Introduce additional requirements for the making of animal welfare standards and guidelines, requiring them to be based on contemporary scientific knowledge/technology and advice from the Animal Welfare Advisory Committee, as well as consistent with sections 6-8 of the Act, and tabled in Parliament.

5. Further guidance on animal cruelty

The Bill also provides an opportunity to improve the drafting of the offence of animal cruelty under s 8. The offence is currently drafted in terms of causing an animal pain or suffering which is “unreasonable and unjustifiable”. However, limited guidance is provided to the courts on how to determine when pain caused to an animal is unreasonable and unjustifiable. Further, the prohibition fails to frame the test in terms of necessity – asking whether the harm to the animal was necessary under the particular circumstances.

We refer to s 4(3) of the UK *Animal Welfare Act 2006*, which codifies well established principles of the common law in determining the question of necessity of harm. It outlines a range of relevant factors for the court to consider, including:

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

The inclusion of such considerations under the AWA would provide guidance to the courts in determining whether harm caused to an animal is unnecessary, in turn promoting greater consistency in the interpretation and application of the legislation.

Recommendation 5

Reframe the test under s 8 in terms of necessity, substituting the current phrasing of “unreasonable and unjustifiable” with the term “unnecessary”, and including further guidance for the courts on how to determine when an act or omission causes unnecessary pain by outlining relevant considerations, including:

- whether the harm could reasonably have been avoided or reduced
- whether the conduct which caused the harm was for a legitimate purpose such as a purpose benefitting the animal or to protect a person, property or another animal
- whether the harm suffered was proportionate to the purpose of the conduct concerned, and
- whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

6. Closed-circuit television for all slaughter facilities

We recommend that the AWA mandate the use of closed-circuit television (CCTV) for all animal slaughter facilities in the state. Slaughter facilities are one of the highest risk points in the production chain for animal welfare. For this reason, there is already a high level of uptake of CCTV within the red meat processing industry, with the majority of abattoirs having already installed CCTV in both pre- and post-slaughter areas.

CCTV in slaughter facilities is also becoming an issue for trade and market access as Australia negotiates trade agreements with other nations. Australia's lack of CCTV in slaughter facilities became a point of contention in the recent UK-Australia Free Trade Agreement negotiations with UK officials raising concerns about Australia's animal welfare standards. This will also be a key consideration for European officials in the ongoing negotiation of the EU-Australia Free Trade Agreement. Requiring CCTV in all slaughter facilities within the state would facilitate trade and market access for Tasmanian businesses as well as providing assurances to Tasmanians that animal welfare is taken seriously and is monitored closely in slaughter facilities within the state.

Recommendation 6

Amend the Bill to ensure that CCTV is required for all slaughter facilities in the state.

7. Disclosure requirements

As a general principle, we support transparency and accountability in the enforcement of animal welfare law. Agencies and organisations charged with administration of the Act should be subject to mandatory disclosure requirements to provide detailed information to the public about the number of compliance monitoring inspections carried out (including rates of non-compliance detected), directions issued, prosecutions commenced, and the nature of those prosecutions.

DNRE should also be required to report to parliament on such matters. Greater transparency about compliance and enforcement activities serves to increase community confidence as it provides assurances that compliance with the Act is being monitored and transgressions are being dealt with appropriately.

Recommendation 7

Amend the Bill to include public reporting obligations for DNRE and RSPCA Tasmania relating to their compliance monitoring and enforcement activities, including requiring DNRE to report to parliament on such activities.

Positions & recommendations on the proposed amendments

The following table outlines our positions and recommendations in relation to the proposed amendments under the Bill. A number of our recommendations make reference to the submission put forward by Alliance core member, Humane Society International (HSI) Australia.

Proposed amendment	Position/recommendation(s)
Amend s 3 of the Act to insert definition of 'dispose'.	Support, on the condition that a restriction is created clarifying that euthanasia should only be utilised as a last resort.
Amend s 3A to insert (1A).	Support, and recommend the amendment proposal by HSI Australia in their submission.
Amend s 4(3) to expand the sections of the Act which do not apply to animal research conducted under certain circumstances.	Do not support, for the reasons outlined by HSI Australia in their submission.
Amend s 8 to make a minor correction to subsection (c) and to ban the use of pronged collars.	Support. We commend the move to ban the use of unacceptable pronged collars, and support the recommendations put forward by HSI Australia in their submission.
Amend s 9 to allow for an alternative conviction under s 8 where the elements of s 9 have not been established.	Support. The availability of an alternative conviction is a positive development. However, we recommend reconsidering whether the mental elements of the offence are necessary to retain. Instead, the aggravating factor should be the severity of the harm caused to the animal (as per the approach taken under the equivalent NSW legislation).
Amend s 16 to provide authorised officers with the power to enter premises (other than dwellings) to provide immediate assistance to animals in urgent need.	Support, although recommend the inclusion of an emergency exception allowing authorised officers to enter dwellings without a warrant where there are reasonable grounds to believe that an animal is at imminent risk of severe harm or death or entry is needed to prevent the destruction of necessary evidence of an offence. We also support the additional recommendations put forward by HSI Australia in their submission.
Amend s 17 to insert subsection (1A) to expand seizure powers of authorised officers.	Support.
Insert s 17A to enable the court to order the seizure and disposal of any animal whose welfare is at risk.	Support, on the condition that a restriction is placed on the power to order euthanasia of the animal (reserved for cases where no other option is available/it's in the best interests of the animal), as per the recommendation by HSI Australia in their submission.

Amend s 24 to enable faster disposal of animal carcasses.	Support.
Amend s 26 to enable obtaining information from people who are interstate.	Support.
Amend s 27 of the Act to clarify exemptions from Animal Ethics Committee approval.	Support, subject to the creation of safeguards regarding proposed s 27 (2) (a) and (b), as per the recommendations by HSI Australia in their submission.
Insert s 41B to create an offence for threatening, intimidating or abusing an animal research inspector.	Support.
Amend s 45 to provide for early cost recovery.	Support.

Appendix - Recognition of animal sentience

Jurisdiction	Legislation	Uses 'sentient'	Wording/description	Comments/source
Australian Capital Territory (ACT)	Animal Welfare Act 1992 s 4A(1)(a)	Yes	<i>The main objects of this Act are to recognise that - (a) animals are sentient beings that are able to subjectively feel and perceive the world around them;</i>	https://www.legislation.act.gov.au/View/a/1992-45/current/html/1992-45.html
Brazil	Civil Code – Bill 351/2015 (approved at the Brazilian National Congress and awaits presidential approval)	No	Bill 351/2015 adds determination in the Civil Code that animals are not considered things, admitting that animals, although they are not recognised as natural persons, are not objects or things. However, there is no provision in the draft defining what the new status of animals would be.	Animal Protection Index https://api.worldanimalprotection.org/country/brazil
Austria	Civil Code of Austria Article 285a	No	<i>Animals are not things; they are protected by special laws. The provisions in force for the things apply to animals only if no contrary regulation exists</i>	Unofficial translation https://www.globalanimallaw.org/database/national/austria/
Belgium	Belgium Civil Code Article 3.39	Yes	<i>Animals are sentient and have biological needs. The provisions relating to tangible things apply to animals, in compliance with the legal and regulatory provisions that protect them and public order.</i>	https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2020020416&table_name=loi
Brussels	Civil Code	No	Animals will be categorized as “a living being endowed with sensitivity, interests of its own and dignity, that benefits from special protection.”	https://aldf.org/article/brussels-recognizes-animals-as-sentient-beings-distinct-from-objects/
Chile	Law 20380 on the Protection of Animals of 2009 Article 2	Yes	<i>animals should be 'respected and protected as living sentient beings that are part of nature'</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/chile https://vlex.cl/vid/ley-n-proteccion-animales-277500587

Colombia	Civil Code, amended by Law 1774 of 2016 Article 1	Yes	Establishes that ' <i>animals as sentient beings are not things</i> ' and that they will receive ' <i>special protection against suffering and pain</i> '	Animal Protection Index: https://api.worldanimalprotection.org/country/colombia https://www.globalanimallaw.org/downloads/database/national/colombia/LEY-1774-DEL-6-DE-ENERO-DE-2016.pdf
Czech Republic	Civil Code, Act No 89/2012 § 494	No	<i>A living animal has a special meaning and value already as a sense-gifted living creature. A living animal is not a thing, and the provisions on things apply mutatis mutandis to a living animal only to the extent that it does not contradict its nature.</i>	Unofficial translation: https://www.globalanimallaw.org/downloads/database/national/czech-republic/Civil-Code.pdf
Denmark	Animal Welfare Act 2021 § 1	Yes	<i>The law aims to promote good animal welfare, including the protection of animals, and promote respect for animals as living and sentient beings. The law is also intended to protect animal ethics.</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/denmark https://www.globalanimallaw.org/downloads/database/national/denmark/bekendtgoelse-af-dyregaernsloven.pdf
European Union	Treaty on the Functioning of the European Union (TFEU) (formerly the Lisbon Treaty) Article 13	Yes	<i>In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.</i>	https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_2&format=PDF
France	French Civil Code Article 515-14	Yes	Recognises that animals are ' <i>living beings gifted with sentience</i> '	Animal Protection Index: https://api.worldanimalprotection.org/country/france https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000030250342/

France	Law 76-629 of 1976 on the Protection of Nature Article 9	Yes	<i>Every animal being a sentient being must be placed by its owner in conditions compatible with the biological imperatives of its species.</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/france https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000684998?init=true&page=1&query=76-629&searchField=ALL&tab_selection=all
Germany	German Civil Code (BGB) Section 90 (a)	No	<i>Animals are not things. They are protected by special statutes. They are governed by the provisions that apply to things, with the necessary modifications, except insofar as otherwise provided.</i>	https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0267
Iceland	Act No. 55/2013 on Animal Welfare Article 1	Yes	<i>The objective of this Act is to promote animal welfare, which entails ensuring that they do not suffer distress, hunger or thirst, fear or suffering, pain, injuries or disease, considering that animals are sentient beings. Another objective of the Act is to allow animals to express their natural behaviour to the fullest.</i>	https://www.government.is/lisalib/getfile.aspx?itemid=d1718344-68cf-11e8-9429-005056bc4d74
Lithuania	The Law on the Care, Keeping and use of Animals 3 October 2012 No XI-2271 Article 1	Yes	<i>This Law shall lay down the remit of state and municipal authorities in ensuring the welfare and protection of animals as sentient beings, the responsibilities of natural and legal persons and other organisations and branches thereof (hereinafter: the 'person') in the area of animal protection and welfare, the welfare and protection of homeless animals, measures to reduce the population of stray animals, requirements for the humane treatment of animals to protect animals against cruel treatment, torture and other adverse impact and to ensure human safety.</i>	http://extwprlegs1.fao.org/docs/pdf/lit28122.pdf
Aguascaliente (Mexico)	Animal Protection Act (2001 – last reformed 2019) Article 1	No	<i>The purpose of this Law is to protect animals from any act of cruelty with which they are martyred or mistreated and to guarantee their well-being, considering that all living beings are beings that feel, that they have a function within</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico

			<i>ecosystems, and that respect for them has multiple benefits to the human being.</i>	https://congresoags.gob.mx/agenda_legislativa/leyes/descargarPdf/243
Chihuahua (Mexico)	Animal Welfare Law (2010 – last reform 2017) Article 3	No	Defines an 'animal' as an ' <i>organic being that lives, feels and moves on its own impulse.</i> '	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico https://www.congresochoihuahua2.gob.mx/biblioteca/leyes/archivosLeyes/1260.pdf
Coahuila (Mexico)	Law of Protection and Treatment of Animals (2013 – last reformed 2017) Article 4 I	No	<i>Animal: Every living being, not human, that has its own mobility, that feels and reacts to pain and to the environmental stimuli</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico https://congresocoahuila.gob.mx/transparencia/03/Leyes_Coahuila/coa197.pdf
Hidalgo (Mexico)	Law for the Protection and Decent Treatment of Animals (2005 – last reform 2018) Article 3 I	No	<i>Animals: Every living, non-human being that feels and reacts to pain and moves voluntarily</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico http://www.congreso-hidalgo.gob.mx/biblioteca_legislativa/leyes_cintillo/Ley%20de%20Proteccion%20y%20Trato%20Digno%20para%20los%20Animales.pdf
Mexico City	The Constitution of Mexico City (updated 2017) Article 18	Yes	<i>This Constitution recognises animals as sentient beings and should therefore be treated with dignity.</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico http://www.secretariadeasuntosparlamentarios.gob.mx/leyes_y_codigos.html
Michoacán de Ocampo (Mexico)	Law of Rights and Protection for Animals (2018)	Yes	<i>The State through this Law recognizes that non-human animals are sentient beings who experience different physical and emotional sensations, reason why they are recognized as object of protection of the present Law, erecting on natural or</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico

Article 2			<i>legal persons the obligation to procure their protection, respect and well-being, in accordance with the ethical principles contained in this Law, its Regulations and other applicable provisions.</i>	http://congresomich.gob.mx/file/LEY-DE-DERECHOS-Y-PROTECCI%C3%93N-PARA-LOS-ANIMALES-REF-28-DE-AGOSTO-DE-2019.pdf
Veracruz (Mexico)	Animal Protection Act (2010 – last reform 2016) Article 4 I	No	Defines animals as ' <i>being alive with the ability to move on its own, experience sensitivity and emotions and conduct behaviours aimed at their survival and those of their species.</i> ' <i>Animal: Living being with the ability to move by its own means, experience sensitivity and emotions and perform behaviors aimed at their survival and those of their species.</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/mexico https://www.legisver.gob.mx/leyes/LeyesPDF/LPANIMALES04022020F.pdf
Moldova	Civil Code 2002 Article 287	No	<i>Animals</i> <i>(1) Animals are not considered things. They are protected by special laws.</i>	Unofficial translation https://www.globalanimallaw.org/downloads/database/national/moldova/moldova.pdf
Netherlands	Animals Act 2011 (in force since 2013) Article 1.3	Yes	<i>Recognition of the intrinsic value as referred to in the first paragraph is understood to mean recognition of the self-esteem of animals, being sentient beings. When setting rules by or pursuant to this Act, and taking decisions based on those rules, full account is taken of the consequences that these rules or decisions have for this intrinsic value of the animal, without prejudice to other legitimate interests. In any case, it is provided that the infringement of the integrity or welfare of animals is prevented beyond what is reasonably necessary and that the care that the animals reasonably require is ensured.</i>	Unofficial translation https://wetten.overheid.nl/BWBR0030250/2013-01-01
Netherlands	Dutch Civil Code Book 3 General Property Law, General Provisions, section 1 definitions, Article 2a1	No	States that ' <i>animals are not things</i> '.	http://www.dutchcivillaw.com/civilcodebook033.htm https://wetten.overheid.nl/BWBR0005291/2015-08-27#Opschrift

New Zealand	Animal Welfare Act 1999 Long title	Yes	An Act— to reform the law relating to the welfare of animals and the prevention of their ill-treatment; and, in particular,— to recognise that animals are sentient:	https://www.legislation.govt.nz/act/public/1999/0142/latest/DLM49664.html
Oregon	Offenses Against General Welfare and Animals ORS 167.305	Yes	The Legislative Assembly finds and declares that: (1) Animals are sentient beings capable of experiencing pain, stress and fear;	https://oregon.public.law/statutes/ors/167.305
Peru	Animal Protection and Welfare Law 30407 2016 Articles 1, 14	Yes	The state establishes the necessary conditions to provide protection to domestic or wild vertebrate animal species and to recognise them as sentient animals, which deserve to enjoy good treatment by human beings and live in harmony with their environment. 'all species of domestic and wild vertebrate animals kept in captivity' are 'sentient beings'	Animal Protection Index: https://api.worldanimalprotection.org/country/peru https://www.globalanimallaw.org/downloads/database/national/peru/30407.pdf
Poland	Animal Protection Act (1997 - last amended 2017) Article 1(1)	No	The animal as a living creature, capable of suffering, is not a thing.	https://www.animallaw.info/statute/poland-cruelty-polish-animal-protection-act
Quebec	Animal Welfare and Safety Act Q 2015, c B-3.1 Long title	Yes	As animals are sentient beings that have biological needs	https://www.legisquebec.gouv.qc.ca/en/document/cs/B-3.1
Quebec	Civil Code of Quebec 1991 898.1	Yes	Animals are not things. They are sentient beings and have biological needs. In addition to the provisions of special Acts which protect animals, the provisions of this Code and of any other Act concerning property nonetheless apply to animals.	https://www.legisquebec.gouv.qc.ca/en/document/cs/CCQ-1991
Russia	Federal Law No. 498- Ø3 'On Responsible	No	States that the treatment of animals should be based on the following 'moral principles and principles of humanity': that	Animal Protection Index:

	Handling of Animals and on Amending Certain Legislative Acts of the Russian Federation' adopted on 17 December 2018 Article 4		animals should be treated as creatures capable of experiencing emotions and physical suffering; that the fate of the animal is a human responsibility; that the population should be educated in moral and humane attitudes toward animals, and that animal welfare is a scientifically-based combination of moral, economic and social interests of a person, society and the state.	https://api.worldanimalprotection.org/country/russia
Spain	Civil Code (new amendments were passed in 2021) Article 333	Yes	To recognise animals are "living beings endowed with sentience rather than 'things,'" specifically "moveable property." 1. <i>Animals are living beings endowed with sensitivity. Only the regime will be applicable of goods and of things to the extent that it is compatible with their nature and with the provisions for their protection</i>	Animal Protection Index: https://api.worldanimalprotection.org/country/spain https://www.globalanimallaw.org/downloads/database/national/spain/animal-sentience-spanish-law.pdf
Catalonia (Spain)	Civil Code of Catalonia Art. 511-1 (3)	No	<i>The animals, which are not considered as things, are under the special protection of the laws. Only apply to them the rules of goods in accordance with their nature.</i>	Unofficial translation: https://www.globalanimallaw.org/database/national/spain/
Catalonia (Spain)	Royal Decree 22/2003, amending Royal Decree 3/1988	Yes	Recognises animals as being physically and psychologically sentient beings.	Animal Protection Index: https://api.worldanimalprotection.org/country/spain
Andalusia (Spain)	Royal Decree 11/2003	No	Recognises that animals may experience feelings such as pleasure, fear, stress, anxiety, pain or happiness.	Animal Protection Index: https://api.worldanimalprotection.org/country/spain
Serbia	Law on Animal Welfare (Official Gazette of the Republic of Serbia", No. 41/2009) Article 2	No	<i>Animal welfare, which is regulated by this law, refers to animals that can sense pain, suffering, fear and stress</i>	https://www.globalanimallaw.org/downloads/database/national/serbia/Serbia-Law-on-Animal-Welfare-2009.pdf

Slovakia	Civil Code (updated 2018)	No	Updated the definition of 'animals' to reflect that they are living beings, not things	https://aldf.org/article/brussels-recognizes-animals-as-sentient-beings-distinct-from-objects/
Sweden	Animal Welfare Act 2018 Chapter 1 Section 1 (and the governmental bill)	No	Chapter 1, Section 1 of the Act mandates that animals shall be 'respected'. <i>This Act aims to ensure good animal welfare and promote good animal welfare and respect for animals.</i> (unofficial translation) The governmental bill states that treating animals with respect means to acknowledge that animals are living sentient beings with needs that must be met. It also explicitly states that animals have value, regardless of the use humans have for them.	https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/djurskyddslag-20181192_sfs-2018-1192 Animal Protection Index; https://api.worldanimalprotection.org/country/sweden
Switzerland	Swiss Civil Code Article 641(a)	No	1- <i>Animals are not objects.</i> 2- <i>Where no special provisions exist for animals, they are subject to the provisions governing objects.</i>	https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/24/233_245_233/20180101/en/pdf-a/fedlex-data-admin-ch-eli-cc-24-233_245_233-20180101-en-pdf-a.pdf
Switzerland	Animal Welfare Act 2005 Articles 1, 3	No	<i>The purpose of the Act is to protect the dignity and welfare of animals (Article 1), and dignity is the inherent worth of the animal that must be respected when dealing with it (Article 3).</i>	https://www.globalanimallaw.org/downloads/database/national/switzerland/Tierschutzgesetz-2005-EN-2011.pdf
Tanzania	Animal Welfare Act 2008 s 4(b)(i)	Yes	<i>With a view to giving effect to the fundamental principles of National Livestock Policy and Animal Welfare, every person exercising powers under, applying or interpreting this Act shall have regard to- ...</i> <i>(b) Recognising that- (i) an animal is a sentient being</i>	https://www.globalanimallaw.org/downloads/database/national/tanzania/tan85327.pdf
United Kingdom	Animal Welfare (Sentience) Bill 2021	Yes	<i>A Bill to make provision for an Animal Sentience Committee with functions relating to the effect of government policy on the welfare of animals as sentient beings.</i>	This Bill is currently in the House of Commons and has not reached Royal Assent https://bills.parliament.uk/bills/2867