

## Submission: Renewing the Australian Animal Welfare Strategy



Department of Agriculture, Fisheries and Forestry  
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29 June 2024

Dear Sir/Madam

### **Consultation: Renewing the Australian Animal Welfare Strategy:**

#### **About us**

We are a group of animal and food system law and policy experts from Melbourne Law School (The University of Melbourne), QUT School of Law, and the Global Centre for Preventive Health and Nutrition, Institute for Health Transformation, Faculty of Health, Deakin University Deakin University. We have together and separately published systematic legal, empirical and policy-oriented research addressing animal welfare regulation, and food and agriculture systems policy in Australia over the last decade or more. This submission is based on insights from these scholarly works published in refereed journals, which are referenced throughout our responses below. It is also based on the recommendations from the PhD thesis of Lev Bromberg, 'Applying a Multi-Species Account of Law and Policy to Evaluate the Legitimacy of Australian Farmed Animal Welfare Standards'. This work involved extensive documentary analysis and interviews with stakeholders and participants involved in recent Australian Animal Welfare standard-setting processes.

We are available for further discussion and questions if needed. Please contact us via [leobromberg86@gmail.com](mailto:leobromberg86@gmail.com) or 0401202287.

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## Summary

Our submission makes the following central points:

Animal interests should be systematically considered. While animal welfare regulation typically focuses on specific policy domains — such as farming, experimentation, and the protection of certain species — animals are profoundly impacted by laws and policies beyond this narrow scope.

The review of the AAWS presents a timely opportunity for the three levels of government to work together with affected stakeholders and the general community to develop responsive, effective, and coherent regulatory regimes receptive to animal interests. Our submission makes the following recommendations in relation to Australian Animal Welfare Strategy (AAWS) development and implications for animal welfare policy:

- **Effective Governance:** Effective regulatory governance requires a strong alignment between the broader strategy (AAWS), policymaking and regulation, including the development of Australian animal welfare standards.
- **Animal Impact Assessment:** Evaluating the costs, benefits and impacts of regulation is a critical element of policymaking and regulation. Animal impact assessments should be undertaken for existing and proposed laws, regulations and policies that materially impact, or have the potential to materially impact, animals.
- **Regulatory Impact Statements:** Where new regulation might impact on animal interests, animal impact assessments could be integrated within existing Regulatory Impact Statement (RIS) requirements.
- **Federal Agency:** In Australia, a new independent agency could be established to undertake, or review, animal impact assessments. Vesting a Federal agency with this function would support the Australian Government's leadership and coordination role as part of a renewed Australian Animal Welfare Strategy (AAWS).
  - This agency would support harmonisation and collaboration between all three levels of government, enhancing regulatory effectiveness.
  - Such an agency could also be responsible for developing animal welfare policies of national significance that reflect community values and promote animal interests and commissioning independent research to inform policy development.
- **State and Territories:** Since animal welfare regulation is primarily a state and territory responsibility, the role of existing Animal Welfare Advisory Committees (AWACs) established at state and territory levels could be expanded.

- These committees, or new independent agencies, could be appropriately resourced to undertake, or review, animal impact assessments developed by other public authorities.
- They would have the power to request information from public authorities to identify how they have considered the interests of animals.
- These committees/agencies would collaborate with the Federal agency noted above, where such an agency is established.
- **AAWS Work Stream Addressing Cross-cutting Issues:** The renewed AAWS should include a new work stream designed to address cross-cutting issues for animals including climate change and innovation.

### Question 1: Vision

The discussion paper provides the following vision statement:

“To establish an Australian animal welfare system that brings stakeholders together, identifies national priorities with actions and outcomes, and demonstrates to the public and international partners that Australia values the welfare of all animals.”

In our view, the proposed vision statement needs to be revised given the evolution of community norms about ethical animal treatment over the past two decades.<sup>1</sup> Community values towards animals both in Australia<sup>2</sup> and internationally<sup>3</sup> are evolving and there is an expectation that societies should treat animals with respect. The Australian community increasingly expects governments and institutions to ensure that animals are being treated ethically.<sup>4</sup>

The proposed vision statement does not capture the essence of a contemporary animal welfare strategy, which, in our view, must have the interests of animals at its core. We, therefore, propose the following vision statement: *To deliver sustainable improvements in the welfare of all animals,<sup>5</sup> and recognise their contribution as companions and contributors to health and ecological well-being.*

This formulation would reinforce existing government commitments to promote animal welfare. Governments, including in Australia, already recognise the need to consider animal

<sup>1</sup> Z Budak, N Samarakoon and P Sammut, *From Values to Riches 2024: Charting Consumer Demand for Responsible Investing in Australia* (Responsible Investment Association Australasia) <[https://responsibleinvestment.org/wp-content/uploads/2024/03/From-Values-to-Riches-2024\\_RIAA.pdf](https://responsibleinvestment.org/wp-content/uploads/2024/03/From-Values-to-Riches-2024_RIAA.pdf)>;

Alexander Saeri and Emily Grundy, *Australian Animal Welfare Survey 2023: Summary Report* (BehaviourWorks Australia, 2023) <<https://osf.io/bf64u>>; Futureye, *Commodity or Sentient Being? Australia's Shifting Mindset on Farm Animal Welfare* (Independent Report Commissioned by Australian Department of Agriculture, 2018) <<https://www.sheepcentral.com/wp-content/uploads/2019/05/190129-Commodity-or-Sentient-Being-Australias-Shifting-Mindset-on-Farm-Animal-Welfare-v.-7.0.pdf>>.

<sup>2</sup> Saeri and Grundy (n 1).

<sup>3</sup> see eg Directorate-General for Health and Food Safety (European Commission) and Kantar Public, *Attitudes of Europeans towards Animal Welfare: Report* (Publications Office of the European Union, 2023) <<https://data.europa.eu/doi/10.2875/872312>> (*Attitudes of Europeans towards Animal Welfare*).

<sup>4</sup> Futureye (n 1).

<sup>5</sup> This was to some extent captured in the lapsed AAWS, which included both a Vision, ‘all Australians value animals and are committed to improving their welfare’ and a Mission, ‘to deliver sustainable improvements in the welfare of all animals’ The primary aim of the lapsed AAWS strategy was ‘to identify, understand, prioritise and act on things that have a direct impact on the welfare on animals’.

interests via domestic legislation,<sup>6</sup> policy commitments,<sup>7</sup> and in recent trade agreements.<sup>8</sup> The idea that animals have interests, that they should be protected from cruelty, that their welfare is important independently of human interests, and that they should be afforded certain freedoms, already lies at the heart of the very existence of animal protection laws. In recent years, jurisdictions have sought to reinforce government commitments to protect animal interests by explicitly recognising the principle of sentience<sup>9</sup> as the foundation of animal protection legislation.<sup>10</sup>

Bringing stakeholders together, identifying national animal welfare priorities, and publicly demonstrating Australia's commitment are secondary objectives that can support this vision. However, these secondary objectives should be articulated in a way that closely aligns with the vision statement, for example:

- To bring all stakeholders together and identify national priorities with actions and outcomes to advance the interests of animals, and
- To advance Australia's reputation by promoting sustainable improvements in animal welfare.

### **Question 2: Do the above proposed streams cover the right priority areas for the strategy?**

The streams suggested in the paper in response to Question 2 are broadly appropriate. In our view, a priority area for the AAWS, should be implementation and effective governance. This is necessary to respond to legitimate community expectations that Australian animal welfare regulation promotes the ethical treatment of animals.

In particular, the AAWS should inform the creation and implementation of animal welfare standards, a core part of the AAWS, since to date there has been a disconnect between the two. The national standard setting process provides an opportunity for Australian governments, stakeholders and the broader community to reflect on the appropriateness of a range of practices.

There is a concerning tendency for animal interests being misrepresented, discounted, or overridden in the development of animal welfare standards.<sup>11</sup> This has led to concerns about

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<sup>6</sup> Jane Kotzmann, 'A Typology of Australian Animal Sentience Recognition Provisions — Enacted and Proposed' (2023) 51(2) *Federal Law Review* 157 <<https://doi.org/10.1177/0067205X231166707>>.

<sup>7</sup> 'Renewal of the Australian Animal Welfare Strategy (AAWS) - DAFF' <<https://www.agriculture.gov.au/agriculture-land/animal/welfare/aaws>>.

<sup>8</sup> 'Australia-UK FTA Chapter 25 Animal Welfare and Antimicrobial Resistance', *Australian Government Department of Foreign Affairs and Trade* <<https://www.dfat.gov.au/trade/agreements/in-force/aukfta/official-text/australia-uk-fta-chapter-25-animal-welfare-and-antimicrobial-resistance>>.

<sup>9</sup> Kotzmann (n 6); Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 1<sup>st</sup> ed, 2024) <<https://www.bloomsburycollections.com/monograph?docid=b-9781509970483>> ('*The Legal Recognition of Animal Sentience*').

<sup>10</sup> Indeed, animal sentience was explicitly acknowledged in the lapsed AAWS, which noted that 'sentience is the reason that [animal] welfare matters'.

<sup>11</sup> Esther Han, 'RSPCA Threatens to Quit Poultry Standards Advisory Group, as Integrity of Process Is Questioned', *The Sydney Morning Herald* (14 February 2017) <<https://www.smh.com.au/business/consumer-affairs/rspca-threatens-to-quit-poultry-standards-advisory-group-as-integrity-of-process-is-questioned-20170213-gubgx0.html>>; James Thomas and Alison Branley, 'Egg Farmers Accused of Colluding with

the integrity of the process expressed by public interest groups, animal scientists, and even state government officials.<sup>12</sup>

One example of this is provided by the painful sheep husbandry procedure of mulesing.<sup>13</sup> It was acknowledged during the standard setting process that pain relief for mulesing would benefit sheep. However, a standard mandating the use of pain relief was not included in the national standards because it was not supported by the peak industry group, WoolProducers Australia.<sup>14</sup>

Another concern is that the standard setting process is susceptible to private interest group influence.<sup>15</sup> A phase out of battery cages — small, barren wire cages, where layer hens spend their lives confined in a space smaller than an A4 sheet of paper — was only included in the draft standards after:

- a major campaign by animal protection groups that triggered over 150,000 public submissions,
- the airing of allegations of corruption and regulatory capture in the media, and
- concerns expressed by several state jurisdictions about being seen to participate in a process that failed to genuinely consider any animal welfare regulatory reforms.

These problems with the development of national animal welfare standards undermine the legitimacy of the AAWS, and the broader animal protection regulatory framework. Effective regulatory governance would require strong alignment between the broader strategy (AAWS) and animal welfare standards. Moreover, to ensure the effectiveness of AAWS, more consideration and development of monitoring and review mechanisms is required.<sup>16</sup> More generally, there is a need for effective governance to ensure that animal interests are appropriately considered by public agencies and officials exercising powers that impacts on animals. Our recommendations to this review, including the establishment of an independent agency (as was also recommended by the Productivity Commission in 2016)<sup>17</sup> and transparent animal impact assessments, will address the disconnect between the objects of the AAWS and the development of national animal welfare standards.

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Government Department to Sabotage Moves to Outlaw Battery Hens', *ABC News* (Text, 21 December 2017) <<https://www.abc.net.au/news/2017-12-21/egg-farmers-accused-of-colluding-with-nsw-government/9229242>>.

<sup>12</sup> Han (n 11); James Thomas, 'Executive Email Reveals Stoush over "Stage-Managed" Process to Benefit Egg Industry', *ABC News* (Text, 8 January 2018) <<https://www.abc.net.au/news/2018-01-08/concerns-poultry-welfare-standards-stage-managed-by-industry/9299256>>.

<sup>13</sup> Lev Bromberg, 'Numbing the Pain or Diffusing the Pressure? The Co-Optation of PETA's "Naming and Shaming" Campaign against Mulesing' (2021) 43(3) *Law & Policy* 285 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/lapo.12172>> ('Numbing the Pain or Diffusing the Pressure?').

<sup>14</sup> Animal Health Australia, *Australian Animal Welfare Standards and Guidelines for Sheep Public Consultation Response Action Plan* (May 2014) <<https://web.archive.org/web/20230324022623/https://www.animalwelfarestandards.net.au/files/2011/02/Final-Sheep-Response-Action-Plan-May-2014-080714.pdf>>.

<sup>15</sup> Lev Bromberg, 'Applying a Multi-Species Account of Law and Policy to Evaluate the Legitimacy of Australian Farmed Animal Welfare Standards' (PhD, University of Melbourne, (forthcoming)).

<sup>16</sup> Jed Goodfellow, 'Animal Welfare Regulation in the Australian Agricultural Sector: A Legitimacy Maximising Analysis' (PhD Thesis, Macquarie Law School, 2015) 93–102.

<sup>17</sup> Productivity Commission, *Regulation of Australian Agriculture (Inquiry Report)* (No 79, 15 November 2016) <<https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf>>.

**Question 3: Are there any shared factors affecting animal welfare that cut across all, or multiple, animal groups? For example: Climate change, innovation, workforce retention.**

Climate change, innovation, biodiversity loss, socio-economic disadvantage and zoonotic disease risk are examples of the issues that intersect and which impact on animal welfare across multiple animal groups.

Increasingly, international institutions, scholars and government agencies are recognising the interconnections between humans, animals and the environment.<sup>18</sup> The interrelationships between humans, animals and the environment have been conceptualised through approaches such as One Health and Planetary Health.<sup>19</sup>

Situations where animal welfare is poor tend to raise issues for public health and sustainability.<sup>20</sup> For instance, intensive forms of animal agriculture are linked to public health concerns such as anti-microbial resistance caused by overuse or misuse of antibiotics, as well as bird flu pandemics.<sup>21</sup> Animal agriculture is also a major contributor to greenhouse gas emissions, deforestation and biodiversity loss.<sup>22</sup> Likewise, animal welfare is impacted by, for instance, socio-economic disadvantage, initiatives to change farming practices to mitigate and adapt to climate change or to advance new technologies for conservation or farming purposes.<sup>23</sup>

However, law and policy has generally struggled to address the intersections between animal, human and environmental health and wellbeing.<sup>24</sup> In particular, law and policy has tended to treat animal welfare as separate from (and, if considered at all, secondary to) human health or environmental concerns. To address this issue, and to improve governance as a whole, a new

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<sup>18</sup> EAT-Lancet Commission, *Food in The Anthropocene: The EAT-Lancet Commission on Healthy Diets* (The Lancet, 2019) <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31788-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31788-4/fulltext)>; Food and Agriculture Organization of the United Nations et al, *One Health Joint Plan of Action, 2022–2026* (14 October 2022) <<http://www.fao.org/documents/card/en/c/cc2289en>>; Rebeca Garcia Pinillos, *One Welfare: A Framework to Improve Animal Welfare and Human Well-Being* (CABI, 2018) ('One Welfare').

<sup>19</sup> Samuel S Myers, 'Planetary Health: Protecting Human Health on a Rapidly Changing Planet' (2017) 390(10114) *The Lancet* 2860 <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(17\)32846-5/abstract](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(17)32846-5/abstract)> ('Planetary Health'); Food and Agriculture Organization of the United Nations et al (n 18); Australian Medical Association, 'One Health Position Statement' (2023).

<sup>20</sup> See, eg, World Organisation for Animal Health, *Animal Welfare: A Vital Asset for a More Sustainable World* (Vision Paper, 2024) <<https://www.woah.org/app/uploads/2024/01/en-woah-visionpaper-animalwelfare.pdf>>; Australian Centre for International Agricultural Research, 'Animal Health: A Cornerstone for Public Health' (22 November 2022) <<https://www.aciar.gov.au/media-search/blogs/animal-health-a-cornerstone-public-health>> ('Animal Health').

<sup>21</sup> Christine Parker, Amelia Cornish and Laura Boehm, 'The Environmental Social Governance of Animal Welfare: A Review of Current Practice in Responsible Investment in Australia' (2022) 50(2) *Australian Business Law Review* 91, 100 <<https://search.informit.org/doi/10.3316/agispt.20220906073667>>.

<sup>22</sup> Ibid.

<sup>23</sup> Simon Coghlan and Christine Parker, 'Harm to Nonhuman Animals from AI: A Systematic Account and Framework' (2023) 36(2) *Philosophy & Technology* 25 <<https://link.springer.com/10.1007/s13347-023-00627-6>> ('Harm to Nonhuman Animals from AI').

<sup>24</sup> Katie Woolaston et al, 'An Argument for Pandemic Risk Management Using a Multidisciplinary One Health Approach to Governance: An Australian Case Study' (2022) 18 *Globalization and Health* 73 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9321311/>> ('An Argument for Pandemic Risk Management Using a Multidisciplinary One Health Approach to Governance'); Danielle Celermajer et al, 'Multispecies Justice: Theories, Challenges, and a Research Agenda for Environmental Politics' (2021) 30(1–2) *Environmental Politics* 119 <<https://www.tandfonline.com/doi/full/10.1080/09644016.2020.1827608>> ('Multispecies Justice').

'ecological' regulatory approach is required that prioritises dealing with intersecting challenges and ensuring the protection of healthy ecosystems for humans and all living creatures.<sup>25</sup>

We recommend establishing a new AAWS work stream designed to identify measures needed to meaningfully improve animal welfare in legal and policy areas outside of Australia's current animal welfare system. Relatedly, this work stream would be tasked with bringing animal welfare considerations into spaces where regulatory responses to other issues are being developed (including climate change, biodiversity loss, innovation, biosecurity or socio-economic inequalities). Various concepts, including ecological regulation and One Health, could inform the work stream's approach.

While one work stream is a starting point, future AAWS revisions could examine how to have interconnected work streams dealing with these broader challenges given the complexity of the issues involved.

#### **Question 4: What do you think are the biggest challenges facing Australia's animal welfare system?**

As Challenge 1 in the Discussion Paper notes, stakeholders have different expectations and interests regarding animal welfare. Some of the challenges set out in the Discussion Paper are more important to some stakeholders than others. Since the vision of the AAWS should centre the interests of animals, it is important that the AAWS prioritises these challenges in order of significance to animals.

Challenge 2 in the discussion paper relates to regulatory harmonisation: 'animal welfare is primarily a state and territory responsibility, providing challenges to a harmonised approach to decision-making'. In respect of animal welfare regulation, harmonisation is usually sought by industry stakeholders.<sup>26</sup> Our research indicates that within the national standard setting process, promoting harmonisation can lead to 'lowest common denominator' standards, undermining the interests of animals.<sup>27</sup>

One particularly important challenge relates to the development of animal welfare standards, previously described as a 'cornerstone' of the AAWS.<sup>28</sup> Challenge 5 in the Discussion Paper above relates to the national standards development system, described as 'complex' and 'not currently meeting all stakeholder needs'. Animal welfare standards have a significant impact on the interests of many millions of animals, and thus, as we note in our response to Question

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<sup>25</sup> Christine Parker, Fiona Haines and Laura Boehm, 'The Promise of Ecological Regulation: The Case of Intensive Meat' [2018] *Jurimetrics* 15; Christine Parker, 'From Responsive Regulation to Ecological Compliance: Meta-Regulation and the Existential Challenge of Corporate Compliance' in D Daniel Sokol and Benjamin van Rooij (eds), *The Cambridge Handbook of Compliance* (Cambridge University Press, 2021) <<https://www.cambridge.org/core/books/cambridge-handbook-of-compliance/A7A803D987C9C001C6569395BEE5051C>>.

<sup>26</sup> Bruce Gemmill, *Review of the Australian Animal Welfare Strategy (AAWS)* (2009) <<https://web.archive.org/web/20160314063643/http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/Gemmill%20review-aaws.pdf>>.

<sup>27</sup> Bromberg (n 15).

<sup>28</sup> Animal Health Australia, *AUSTRALIAN ANIMAL WELFARE STRATEGY Development of Australian Standards and Guidelines for the Welfare of Livestock Business Plan* (2009) 2 <<https://web.archive.org/web/20160314133729/http://www.animalwelfarestandards.net.au/files/2011/01/Animal-Welfare-Standards-and-Guidelines-Development-Business-Plan.pdf>>.

2, there is a need to align this process with the AAWS to ensure that the standards promote animal interests.

We partially disagree with the suggestion (Challenge 3 in the Discussion Paper) that ‘community values and expectations about animal welfare issues are *constantly changing*’ (emphasis added). It is clear, based on existing Australian and international research, that the community places a high value on the intrinsic value of animals and increasingly expects governments and institutions to ensure that animals are being treated ethically.<sup>29</sup> Indeed, the community is increasingly concerned about forms of animal exploitation, particularly in intensive agriculture, due to interconnected harms between animals, human health and the environment.<sup>30</sup>

Community concerns have ‘crystallised’ around a number of practices over decades.<sup>31</sup> These practices include intensive confinement of farmed animals (such as layer hens and sows),<sup>32</sup> the administration of painful procedures (such as mulesing) without pain relief,<sup>33</sup> the live export of sheep (banned in NZ and the UK and currently being phased out in Australia), and the use of animals in toxicity testing for cosmetic products.<sup>34</sup> As Parker et al observe, such controversial issues have ‘garnered significant attention, brand boycotts, retailer action, law reform efforts, and, in some instances, legal enforcement action’.<sup>35</sup> People’s interest on other issues may wax and wane, and, as we note in our response to Question 6, there is a need for independent research on community values to inform policy development on specific issues.

We partially agree with the statement that there is a complex relationship between animal welfare regulation, productivity and community expectations. Like other forms of regulation, animal welfare regulation needs to balance competing interests. Certainly, there is tension between productivity and animal welfare. While many producers care about the welfare of their animals, in the absence of effective regulation, the drive for efficiency and the need to compete can come at the expense of animal welfare. Animal welfare regulation needs to strike an appropriate balance between animal welfare and productivity in line with community expectations.

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<sup>29</sup> Budak, Samarakoon and Sammut (n 1); Saeri and Grundy (n 1); Futureye (n 1); Directorate-General for Health and Food Safety (European Commission) and Kantar Public (n 3); Amelia Cornish, David Raubenheimer and Paul McGreevy, ‘What We Know about the Public’s Level of Concern for Farm Animal Welfare in Food Production in Developed Countries’ (2016) 6(11) *Animals* 74 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5126776/>>.

<sup>30</sup> Parker, Cornish and Boehm (n 21) 100.

<sup>31</sup> Ibid 92.

<sup>32</sup> Christine Parker and Lev Bromberg, ‘National Plan to Allow Battery Cages until 2036 Favours Cheap Eggs over Animal Welfare’, *The Conversation* (5 July 2021) <<http://theconversation.com/national-plan-to-allow-battery-cages-until-2036-favours-cheap-eggs-over-animal-welfare-163552>>; Christine Parker et al, ‘A Public Appetite for Poultry Welfare Regulation Reform: Why Higher Welfare Labelling Is Not Enough’ [2018] *Alternative Law Journal* 1037969X1880039 <<http://journals.sagepub.com/doi/10.1177/1037969X18800398>> (‘A Public Appetite for Poultry Welfare Regulation Reform’); Rachel Carey, Christine Parker and Gyorgy Scrinis, ‘How Free Is Sow Stall Free? Incremental Regulatory Reform and Industry Co-Optation of Activism’ n/a(n/a) *Law & Policy* <<http://onlinelibrary.wiley.com/doi/abs/10.1111/lapo.12154>> (‘How Free Is Sow Stall Free?’).

<sup>33</sup> Bromberg (n 13).

<sup>34</sup> Jane Kotzmann, ‘Australia’s Animal Testing Laws Are a Good Start, but Don’t Go Far Enough’, *The Conversation* (21 March 2019) <<http://theconversation.com/australias-animal-testing-laws-are-a-good-start-but-dont-go-far-enough-113112>>.

<sup>35</sup> Parker, Cornish and Boehm (n 21). See also Peter John Chen, *Animal Welfare in Australia, Politics and Policy* (Sydney University Press, 2016); Jordan O Hampton, Bidia Jones and Paul D McGreevy, ‘Social License and Animal Welfare: Developments from the Past Decade in Australia’ (2020) 10(12) *Animals* 2237 <<https://www.mdpi.com/2076-2615/10/12/2237>> (‘Social License and Animal Welfare’).



Overall, our view is that these challenges can be addressed, or mitigated, by implementing effective and legitimate processes for animal impact assessment (such as those recommended in our submission).

**Question 5: Are there additional challenges in the animal welfare system that have not been listed above, which the renewed strategy should consider?**

There are two fundamental problems with Australia’s animal welfare system:

Firstly, in making public policy and regulatory decisions, the interests of animals are not being systematically considered, if considered at all.

Secondly, while the animal welfare system typically focuses on specific policy domains — such as farming, experimentation, and the protection of certain species — animals are profoundly impacted by laws and policies beyond this narrow scope.

We consider each in turn below.

Considering Animal Interests

A key objective of a renewed AAWS should be *bringing all stakeholders together*. In this process, animals are also key stakeholders and there is a need for strategies to ensure their interests are adequately conveyed and appropriately considered in decision-making.<sup>36</sup>

While conceptualising animals as affected stakeholders within regulatory systems may at first appear unconventional, there is no reason to confine the category of stakeholders to specific individuals, or indeed, to humans generally. Stakeholders are already understood to include a range of different types of entities or groups. Stakeholders can and do include groups of persons. They include municipalities and community associations. Stakeholders represent diffuse or narrow interests — both private (such as industry associations and the business community) or public (such as environmental protection groups). Stakeholders also include artificial persons — such as public sector agencies and private corporations. Some organisations, such as environmental water managers, have been established to promote environmental objectives and represent environmental ‘interests’ in policy making.<sup>37</sup>

Being a stakeholder — having a ‘stake’ in something — means that one’s interests are affected by the system, institution or process that is being examined. Stakeholders may also have the capacity to affect that activity, institution, or system to varying degrees.

The claim that animals comprise regulatory stakeholders is underpinned by the fact that animals have interests — they have a subjective experience of the world and the capacity to suffer and feel pleasure and pain. This idea is already widely recognised in certain respects. Most notably, it underpins the very existence of animal protection laws, and the burgeoning field of animal welfare science.

Animals are a particularly vulnerable stakeholder constituency. One key reason for animals’ vulnerability is the inherent power imbalance in most human-animal interactions. Another is

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<sup>36</sup> Bromberg (n 15).

<sup>37</sup> Erin O’Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge, 1<sup>st</sup> ed, 2018) <<https://www.taylorfrancis.com/books/9780429889615>> (*‘Legal Rights for Rivers’*).

that, notwithstanding the broad fact of human-animal interdependence, animal interests are not reducible to, and often conflict with, the interests of humans who exploit or use them (such as their ‘owners’).<sup>38</sup> In the absence of robust regulatory protections for animals, such as the ones we propose in our submission, the status quo will lead to worse outcomes for animal stakeholders.

Due to their connections with humans, animals can be affected by laws and policies in a range of different ways. The interdependence of human, animal and environmental health and welfare means that laws and policies protecting the interests of one group (e.g. animals) will often further the interests of others (humans, other animals).<sup>39</sup> There is a need for effective regulatory frameworks that systematically recognise the interdependence, or ‘entanglement’<sup>40</sup> between established and emerging forms of regulation and animals stakeholders.<sup>41</sup>

### Cross-Cutting Issues

There are significant environmental and public health challenges (such as climate change and biodiversity loss), as well as changes in innovation (such as AI) that have significant implications for animal welfare.

Climate change is having, and will continue to have, adverse impacts for animals. For example, a changing climate may make extensive farming practices less feasible, leading to increased confinement of animals. Addressing climate change also has implications for animal welfare.<sup>42</sup>

Meanwhile, habitat loss and fragmentation, which is in part tied to land use for animal agriculture and to climate change, is a significant threat to the welfare of individual animals as

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<sup>38</sup> Ani B Satz, ‘Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property’ (2009) 16 *Animal Law* 65.

<sup>39</sup> Saskia Stucki, *One Rights: Human and Animal Rights in the Anthropocene* (Springer International Publishing, 2023) <<https://link.springer.com/10.1007/978-3-031-19201-2>> (‘*One Rights*’).

<sup>40</sup> Lori Gruen, *Entangled Empathy: An Alternative Ethic for Our Relationships with Animals* (Lantern Books, 2015) (‘*Entangled Empathy*’).

<sup>41</sup> Bromberg (n 15); Christine Parker, Lev Bromberg and Simon Coghlan, ‘Artificial Intelligence and Non-Human Animals: A Multi-Species Justice Approach for AI Law and Governance?’ in Jane Kotzmann and Joanna Kyriakakis (eds), *A Quiet Crisis: Contemporary Animal Law in Australasia (Forthcoming)* (Federation Press).

<sup>42</sup> See, eg, Sara Shields and Geoffrey Orme-Evans, ‘The Impacts of Climate Change Mitigation Strategies on Animal Welfare’ (2015) 5(2) *Animals* 361; Giancarlo Bozzo et al, ‘Animal Welfare, Health and the Fight against Climate Change: One Solution for Global Objectives’ (2021) 11(12) *Agriculture* 1248 (‘Animal Welfare, Health and the Fight against Climate Change’); Joe Joseph et al, ‘Impacts of Climate Change on Animal Welfare’ (2023) 2023 *CABI Reviews* <<https://www.cabidigitallibrary.org/doi/abs/10.1079/cabireviews.2023.0020>>.

well as animals (and humans) as a whole.<sup>43</sup> It is also linked to an increased risk of zoonotic disease.<sup>44</sup>

For the purposes of capturing these sorts of issues in the AAWS, these challenges could be summarised as 'cross-cutting issues' or 'broader environmental and public health challenges related to animal welfare'. The important implications of these issues for animal welfare, and the ways in which responding to these issues can also impact on animal welfare, means a renewed strategy should recognise these challenges. As discussed above in our response to Question 3, a work stream should also be created to deal with the interrelationships between animal welfare and broader public health and environmental issues with a view to in the future developing more than one work stream around these issues.

To further illustrate how broader and cross-cutting issues are impacting on animals, an account of Artificial Intelligence (AI) and animals is provided below. This account also highlights ways in which animal impact assessment (see our response to Question 7) can support responses to emerging and complex issues and developments that impact animals.

### **Animal Impact Assessment and Artificial Intelligence (AI)**

An example of an emerging issue that is already having, and will increasingly have, fundamental impacts on animals is AI.<sup>45</sup> How the impacts of AI on animals will be identified or managed is yet to be considered in any detail in governance policies released to date.<sup>46</sup> Yet, it is critical that regulation, such as animal protection laws, ensure that AI systems do not harm animals, such as by enabling or amplifying animal cruelty.<sup>47</sup>

Animal impact assessment could comprise an important tool for identifying and addressing potential harms to animals that are emerging in rapidly-developing areas, such as AI governance.<sup>48</sup> A systematic harms framework such as that developed by Coghlan and Parker could be used as a basis for undertaking animal impact assessment in the context of AI law and policy.<sup>49</sup> It is possible that such a framework could be adopted for undertaking animal impact assessment outside the AI policy context.

<sup>43</sup> RSPCA, 'How Can Habitat Loss Affect Animal Welfare? –' (8 October 2019)

<<https://kb.rspca.org.au/knowledge-base/how-can-habitat-loss-affect-animal-welfare/>> ('How Can Habitat Loss Affect Animal Welfare?'); N Thompson Hobbs et al, 'Fragmentation of Rangelands: Implications for Humans, Animals, and Landscapes' (2008) 18(4) *Global Environmental Change* 776 ('Fragmentation of Rangelands'); Philipp Semenchuk et al, 'Relative Effects of Land Conversion and Land-Use Intensity on Terrestrial Vertebrate Diversity' (2022) 13(1) *Nature Communications* 615; Barbara Burlingame et al, 'Food Biodiversity and Sustainable Diets: Implications of Applications for Food Production and Processing' in Joyce I Boye and Yves Arcand (eds), *Green Technologies in Food Production and Processing* (Springer US, 2012) 643 <[http://link.springer.com/chapter/10.1007/978-1-4614-1587-9\\_24](http://link.springer.com/chapter/10.1007/978-1-4614-1587-9_24)> ('Food Biodiversity and Sustainable Diets'); Abhishek Chaudhary and Thomas Kastner, 'Land Use Biodiversity Impacts Embodied in International Food Trade' (2016) 38 *Global Environmental Change* 195.

<sup>44</sup> Matthew N Hayek, 'The Infectious Disease Trap of Animal Agriculture' (2022) 8(44) *Science Advances* eadd6681; Rebekah J White and Orly Razgour, 'Emerging Zoonotic Diseases Originating in Mammals: A Systematic Review of Effects of Anthropogenic Land-Use Change' (2020) 50(4) *Mammal Review* 336 ('Emerging Zoonotic Diseases Originating in Mammals').

<sup>45</sup> Coghlan and Parker (n 23).

<sup>46</sup> Parker, Bromberg and Coghlan (n 41).

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Coghlan and Parker (n 23).

## **Question 6: What do you think are the biggest opportunities for Australia’s animal welfare system?**

We broadly agree with the opportunities identified. We also note the: (a) legal and cultural shift towards recognising animal sentience,<sup>50</sup> (b) the emerging strategies for incorporating animal perspectives and interests into regulatory form detailed in this submission (see our response to Question 7), and (c) the interdependence between animal welfare and human and environmental health. We consider these to also be important opportunities for Australia’s animal welfare system.

### The Opportunities for Environmental Social Governance of Animal Welfare

An effective and legitimate AAWS will support Australian business to transition and transform to meet community, investor, and trading partner expectations for high standards of animal welfare.

The Discussion Paper correctly points out in the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> opportunities for Australia’s animal welfare system that Australia’s overseas trading partners are increasingly interested in Australian traders’ animal welfare credentials, that animal and animal-related industries are increasingly building animal welfare into sustainability plans and work practices, and that the social licence for business is changing to reflect the intrinsic value of animals and their importance to people.

These opportunities all highlight the fact that animal welfare is increasingly becoming an important environmental social governance (ESG) issue for animal and animal-related industries in Australia. The vast majority of consumers care about animal welfare above and beyond the minimal limits in the law. This means animal welfare issues can lead to reputational problems and ultimately make some markets and the businesses that depend on them unsustainable. There have been situations where public concern with animal welfare has led to rapid loss of social license to operate and market decimation.<sup>51</sup>

The Responsible Investment Association of Australasia (RIAA) annually surveys investors to understand their priorities. They have consistently found over the last several years that animal welfare is a top priority for investors interested in responsible investment in Australia. In their most recent report, “From Values to Riches 2024 Charting consumer demand for responsible investing in Australia”, RIAA found that the top environmental and social issues Australians want to avoid in their investments is animal cruelty, at the top of the list at 66%, and above human rights and environmental damage.<sup>52</sup> If other animal welfare concerns such as animal testing for non- medical purposes are added, then it is 74%.<sup>53</sup> RIAA observes:

“There remains a striking difference between consumer sentiment and the investment products available to the market. Animal rights is a case in point. Animal cruelty was a top concern amongst Australians in 2022 and has grown in the past two years – 66% of Australians now list animal cruelty as important to avoid when investing their money, while 54% want to avoid animal testing for non-medical purposes. However, only 11% of Assets Under Management is negatively screened for animal testing (for non-medical purposes).”<sup>54</sup>

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<sup>50</sup> Kotzmann and Ferrere (n 9).

<sup>51</sup> Hampton, Jones and McGreevy (n 35).

<sup>52</sup> Budak, Samarakoon and Sammut (n 1).

<sup>53</sup> Ibid.

<sup>54</sup> Ibid 5.

Christine Parker’s research on the ESG of animal welfare shows that many banks and superannuation funds recognise that animal welfare is important for investors, which also has implications for the reputational and environmental risk of investees.<sup>55</sup> However, at present, the lack of effective governance of animal welfare standards in Australia hampers their efforts to effectively respond to concerns about animal welfare.

**Question 7: Are there additional opportunities for improvements in the animal welfare system that have not been listed above, which the renewed strategy should consider?**

The role of a contemporary AAWS should be to promote effective animal protection regulatory frameworks in a way that addresses animals’ vulnerability. In our view, this should include the establishment of robust systems for undertaking animal impact assessment, supported by:

- effective governance processes to ensure that animal interests are appropriately considered
- greater alignment between the AAWS and animal welfare standards
- improved accountability mechanisms for the AAWS including a more effective reporting system through which stakeholders report actions that have taken place to advance the strategy.

Emerging Regulatory Best Practice

Regulatory actors and the community increasingly acknowledge that animals are vulnerable stakeholders and that current frameworks lack legitimacy if they fail to protect animals.<sup>56</sup> Although there is a lack of a formal mechanism for scrutinising the impact of public policy on animals, this is beginning to change as regulators consider strategies to consider animal interests across policy domains. An AAWS strategy that supports systems to account for animal interests is consistent with emerging regulatory best practice.

Two examples of the kinds of contemporary regulatory strategies being developed to better advance and reflect animal interests is provided below.

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<sup>55</sup> Christine Parker and Lucinda Sheedy-Reinhard, ‘Are Banks Responsible for Animal Welfare and Climate Disruption? A Critical Review of Australian Banks’ Due Diligence Policies for Agribusiness Lending’ [2022] *Transnational Environmental Law* 1 <doi:10.1017/S204710252200022X> (‘Are Banks Responsible for Animal Welfare and Climate Disruption?’); Parker, Cornish and Boehm (n 21).

<sup>56</sup> Bromberg (n 15).

## UK Animal Sentience Committee

The Animal Sentience Committee, established in 2022, has the role of considering how UK government policy decisions take account of animal interests.<sup>57</sup> While it is too early to comment on its effectiveness and operation, there appear to some parallels between this committee's function and procedural models of oversight for international human rights compatibility that exist in the UK, Australia and some of its states and territories.<sup>58</sup> These require each new Bill introduced into parliament to be accompanied by a Statement of Compatibility with international human rights and scrutinised by an established parliamentary committee. The Animal Sentience Committee would do something similar for animal interests.<sup>59</sup> The Committee may publish reports on the impact of government policy on animal interests, and the legislation requires the Secretary of State to respond in writing before Parliament.

## Victorian Principles for Decision-Makers (Proposed)

The Victorian government has recently indicated that animals' interests need to be taken into account in the making of government decisions.<sup>60</sup> The Victorian government recognises that under the existing framework there is a lack of obligation for public authorities to consider animal care and protection:

while many decisions made by government consider the impact on animals, this is not presently required by law. As a result, decisions can be made under other Acts or policy areas which have different priorities which may not adequately consider the need to minimise impacts on animals, and which may have unintended consequences.<sup>61</sup>

To address this problem, the Victorian government proposed a set of principles — which recognise that animals are sentient beings — that would need to be considered in the making of decisions that affect animals.<sup>62</sup> These principles would need to be applied by all decision-makers including Ministers, department heads and staff from government departments and public authorities from all portfolios.<sup>63</sup> The government also proposed an accountability mechanism, which would provide the Minister responsible for animal welfare regulation with the ability to request information from public authorities to confirm that they have considered the impacts of the decision on animals by considering these principles.

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<sup>57</sup> Rachel Dunn and Joshua Jowitt, 'The Animal Sentience Committee: Evolution or Revolution in the Recognition of Animal Sentience in the UK?' in Jane Kotzmann and MB Rodriguez Ferrere (eds), *The Legal Recognition of Animal Sentience: Principles, Approaches and Applications* (Hart Publishing, 1<sup>st</sup> ed, 2024) <<https://www.bloomsburycollections.com/monograph?docid=b-9781509970483>>.

<sup>58</sup> George Williams and Daniel Reynolds, 'The Operation and Impact of Australia's Parliamentary Scrutiny Regime for Human Rights' (2015) 41(2) *Monash University Law Review* 469 <[https://www.monash.edu/\\_data/assets/pdf\\_file/0006/446181/Vol412\\_Williams.pdf](https://www.monash.edu/_data/assets/pdf_file/0006/446181/Vol412_Williams.pdf)>.

<sup>59</sup> *Animal Welfare (Sentience) Act 2022*.

<sup>60</sup> Victorian Government, *Plan for Victoria's New Animal Care and Protection Laws* (September 2022) <<https://engage.vic.gov.au/new-animal-welfare-act-victoria>>.

<sup>61</sup> *Ibid*.

<sup>62</sup> Victorian Government, *Plan for Victoria's New Animal Care and Protection Laws* (September 2022) <<https://engage.vic.gov.au/new-animal-welfare-act-victoria>>; These principles were recently supported by a Victorian parliamentary inquiry: see Legislative Council, Economy and Infrastructure Committee, *Inquiry into Pig Welfare in Victoria* (20 June 2024) 74 <<https://www.parliament.vic.gov.au/49e5ff/contentassets/35bbfee2ade9475e922eea15cb170eb7/lceic-60-04-inquiry-into-pig-welfare-in-victoria.pdf>>.

<sup>63</sup> Victorian Government (n 60).

The UK and Victorian developments indicate a willingness by Australian and international governments to consider reforms that will require them to be receptive to animal interests.

At the time of writing, the Victorian process has not yet been finalised and it appears that the Victorian proposal is likely to be ‘watered down’.<sup>64</sup> This demonstrates potential challenges for individual state governments implementing such reforms in the absence of leadership by the Australian Government. The review of the AAWS presents a timely opportunity for the three levels of government to work together with affected stakeholders and the general community to develop responsive, effective, and coherent regulatory regimes receptive to animal interests.

### Integrating Animal Impact Assessment in Regulatory Frameworks

Anticipating and evaluating the potential costs, benefits and impacts of regulation is a critical element of policy-making and regulation. A practical way of ensuring that animal interests are robustly considered would be by proactively undertaking animal impact assessments of laws, regulations and policies (‘animal impact assessments’).

Animal impact assessment should be undertaken for existing and proposed laws, regulations and policies that materially impact, or have the potential to materially impact, animals.<sup>65</sup> Animal impact assessment could be integrated within Regulatory Impact Statements (RISs), which comprise an existing mandatory requirement for decision-making bodies, such as the National Cabinet and Ministerial Councils. Animal impact assessments would need to ensure that the impacts of activities, institutions and systems on animals are systematically identified and robustly considered.

While animal welfare regulation typically focuses on specific policy domains — such as farming, experimentation, and the protection of certain species — animals are profoundly impacted by law and policy in a range of ways and as such considering animal interests across policy domains is unlikely to be straightforward.<sup>66</sup> Regardless, responding to animal interests outside of existing narrow domains is an effective strategy for advancing the welfare of all animals, anticipating new animal welfare issues, and responding to cross-cutting issues such as climate change and innovation.

The renewal of the AAWS provides an opportunity for the Federal Government to provide an important coordination role in relation to animal welfare policy. Undertaking an animal impact assessment will support public agencies, stakeholders and the community in understanding the potential impacts of decisions and policies on animals.

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<sup>64</sup> Department of Energy, Environment and Climate Action Victoria, *Guide to Draft Animal Care and Protection Bill* (December 2023) <<https://engage.vic.gov.au/download/document/33754>>.

<sup>65</sup> Steven P McCulloch and Michael J Reiss, ‘The Development of an Animal Welfare Impact Assessment (AWIA) Tool and Its Application to Bovine Tuberculosis and Badger Control in England’ (2017) 30(4) *Journal of Agricultural and Environmental Ethics* 485 <<https://doi.org/10.1007/s10806-017-9684-5>>.

<sup>66</sup> Parker, Bromberg and Coghlan (n 41).