LAWYERS FOR ANIMALS

NATIONAL ANIMAL WELFARE BILL 2005

SUBMISSION TO THE SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT COMMITTEE

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1. Introduction

1. Lawyers for Animals ('LFA') commends Senator Andrew Bartlett for taking the initiative to introduce the *National Animal Welfare Bill 2005* ('the Bill'), which seeks to alleviate the suffering experienced by millions of animals in Australia today. Their dire situation is the result of the States' and Territories' failure to enact genuine legislative protection for animal welfare and their unwillingness to implement meaningful animal welfare reform.

2. LFA therefore welcomes this opportunity to alert the Senate Rural and Regional Affairs and Transport Committee ('the Committee') to the urgent need for the Commonwealth to assume the primary role in animal protection. Committee Members are encouraged to give their strongest support to the Bill, or at the very least to ensure in their individual capacities that the public interest in *bona fide* animal protection does not continue to be compromised.

3. LFA does not propose to examine every aspect of the Bill. This submission provides an overview of the problems associated with current regulation of animal welfare by the States and Territories and focuses on four key areas of animal welfare in need of urgent reform: Welfare Offences, Inspections, Live Exports and Animals used for scientific purposes.

4. LFA would also welcome the opportunity to elaborate on these issues with the Committee by providing an oral submission

2. Animal welfare in Australia – General comments

a. Failure of the States and Territories to administer bona fide animal protection

5. Central to any civilised society is the fundamental moral norm that we should avoid causing other living beings pain or distress. In other words, there is a basic 'public interest' in avoiding cruelty to animals. It is evident in several regards, including the democratic enactment of animal protection statutes.

6. LFA submits, however, that the States and Territories have manifestly failed to honour the public interest in their administration of these statutes and through their application of Codes of Practice. LFA believes that the provision for a National Animal Welfare Authority represents an immense improvement on current arrangements, whereby animal suffering is institutionalized in so-called 'welfare' legislation.

7. Currently, although the public interest has dictated the enactment of animal welfare statutes, many of the voting public would be surprised to learn that these laws fail to protect the majority of animals. In this regard the law lacks transparency and candour – important traits in any genuine democracy.

8. In essence the problem is that compliance with a Code of Practice provides a defence to what could otherwise be prosecuted as a cruelty offence under the Act. This situation is more or less replicated in each of the States and Territories (See **Appendix 1**).

9. For example, despite its generalising name, s6(1) of the *Prevention of Cruelty to Animals Act 1986* (Vic) ('the Victorian Act') provides that it does not apply to (amongst other things):

> (b) except to the extent that it is necessary to rely upon a Code of Practice as a defence to an offence under this Act the keeping, treatment, handling, transportation, sale, killing, hunting, shooting, catching, trapping, netting, marking, care, use, husbandry or management of any animal or class of animals (other than a farm animal or class of farm animals) which is carried out in accordance with a Code of Practice.

10. In addition, the Victorian Act does not apply to:

> (c) any act or practice with respect to the farming, transport, sale or killing of any farm animal which is carried out in accordance with a Code of Practice;

11. This means that farm animals, which approximate more than 500 million animals in Australia, have no protection whatsoever under the Act. In other words, confined animals such as cattle in feedlots, sheep kept for fine wool and pigs and poultry subject to intensive or battery production, are all exempt from legislative protection. As such,

millions of animals each year are subjected to treatment which would otherwise be prosecuted as aggravated cruelty under, for example, s10 of the Victorian Act.

12. If farm and domestic animals are each sentient beings, as we know they are, on what basis is the benefit of the law's protection denied to one but granted to the other? To keep a sow in a farrowing crate or single stall without exercise or real movement for 6 weeks or longer, for example, is not an offence, as the practice complies with a code. To keep a dog in this way would render its owner liable for prosecution. In both cases excessive confinement constitutes 'cruelty' and should therefore be prohibited. That the protective mantle of the law should cease to apply to some animals only (namely those who are used for profit and are therefore 'cursed' with a Code of Practice) is not in keeping with the public interest in animal welfare.

13. It may be argued that meat consumption *per se* is in the public interest and is an overriding and conflicting consideration. However, this is irrelevant to arguments in favour of adequate animal welfare protection when one considers that humane farming practices are readily available.[1] Where humane farming practices are costly or otherwise difficult to implement, the Government should honour the public interest in avoiding cruelty to animals by subsidising farmers to help establish those systems. If we are a moral society and we choose to use animals for food and economic benefit, then at the very least we should protect them from unnecessary pain and suffering. Anything less is morally indefensible.

b. Failure of the States and Territories to enforce minimum welfare standards

14. As noted above, compliance with a Code of Practice may be relied upon as a defence to prosecution or to exempt the Victorian Act's application altogether, however in practice, they provide little or no protection because Codes of Practice are in and of themselves unenforceable.

15. By way of example, the States and Territories lack adequate, enforceable standards governing the practices of slaughterhouses. The Commonwealth Model Code of Practice for the Welfare of Animals (Livestock at Slaughtering Establishments) (SCARM report 79, CSIRO, 2002) has only been adopted in a limited sense in Queensland and the Territories and *not at all* in other States. At best, this Code of Practice is only a set of voluntary guidelines. Only in South Australia is the Code of Practice directly enforceable (Schedule 2, *Prevention of Cruelty to Animals Regulations* 1985 (SA)); and even there,

[1] See for example *Compassion in World Farming* website: http://www.ciwf.org.uk/about/index.html. As stated: 'CIWF seeks to achieve the global abolition of factory farming and the adoption of agricultural systems which meet the welfare needs of farm animals in the belief that this will also benefit humanity and the environment.'

contravention of the Code carries only a small maximum penalty of $1,250 fine. Consequently, in most of the States and Territories, the slaughter of animals is almost completely unregulated.

16. The Victorian Act, for example, which expressly excludes the slaughter of animals from its operation, provided the slaughter of animals is in accordance with the *Meat Industries Act 1993* (Vic) ('the Meat Act'). However, the Meat Act does not prescribe any standards for the slaughter of animals from an animal welfare standpoint, nor does it legislate for any offence or provide other recourse for the mistreatment of slaughtered animals. Instead, the Meat Act's central focus is to provide a licensing and inspection system for the meat industry, with the view to setting, maintaining and monitoring standards for the production of meat for consumption. While Part 3A of the Meat Act provides that 'PrimeSafe' (the statutory authority for inspections and licensing) may establish Codes of Practice to apply to licences, to date the Model Code of Practice has neither been adopted nor incorporated.

17. Although the legislative framework would appear to be available in each of the States and Territories to implement the Model Code into their respective licensing regulation systems, the opportunity has not been seized. This is unfortunate, given that, read on its own, the Model Code is in many regards a laudable document, which seeks to address many of the possible welfare needs of animals throughout the slaughtering process, notwithstanding that the process is ultimately inimical to their welfare. Further, there is possibly a need for forceful regulation of the slaughter of animals above all other areas of animal use, given the large amount of anecdotal evidence which suggests that in practice, abattoirs are often places of abject cruelty and disregard for animal welfare.

18. The fact that animal cruelty and non-compliance with Codes of Practice continues unchecked is not surprising, though, given that in Australia there is no sufficiently resourced animal welfare inspectorate.

19. The police, in practice, do not play a role in inspection or enforcement of animal welfare laws of their own initiative. Other appointees are rarely heard of. While s24 of the Victorian Act provides that charges may be laid by a member of the police force or a person authorised by the Minister for Agriculture, in practice only the RSPCA plays a meaningful prosecutorial role.

20. However, as a private charitable organisation which is resource deficient, which has a mere 75 full-time and 75 honorary or part-time inspectors Australia-wide, the RSPCA is clearly incapable of discharging its burden, despite its best efforts.

21. What other State or Territory laws are enforced by a private charity? Certainly there is a dedicated police force to enforce the various States' and Territories' *Crimes Acts* in respect of a population of some 20 million people. Surely the more than 541 million 'production' animals and the tens of millions of domestic and indigenous animals warrant an inspectorate whose capabilities are more proportionate to their urgent needs?

22. Given that the RSPCA's mandate is pursuant to an Act of Parliament, then Parliament ought to, at the very least, provide adequate resources (including security protection) to the RSPCA to complete its important task. The fact that Parliament fails to do so means that in reality our animal protection laws simply exist in abstract and do precious little to serve the actual public interest in animal welfare.

c. Failure of the States and Territories to implement bona fide animal welfare reform

23. Australia's recalcitrance in implementing animal welfare reform is evident in, for example, the case of battery hens. The Preface to the 'Model Code of Practice for the Welfare of Animals, Domestic Poultry, 4th Edition, SCARM Report 1983' notes:

> The following Code is based on current knowledge and technology. It will be further reviewed in ***2010*** [emphasis added]; although an earlier review will be implemented if technologies offering significant welfare benefits are available.

24. Therefore, despite ample documentation of the acute suffering of millions upon millions of battery hens annually and the public's acknowledgement of their plight, the Animal Welfare Committee is not due to review this Code until 2010, unless 'technologies offering significant welfare benefits' become available in the interim. See also for example the meaningless statement in clause 2.2.4.[2] This proviso suggests that technology offers the only prospect of 'significant welfare enhancement' and thus side-steps the more difficult task of phasing out battery hen cages.

25. In this regard the Committee is urged to note that Australia lags behind all 25 European Union countries, where the further establishment of battery hen systems has been *banned since 2003*. Furthermore, the EU Council of Agriculture Ministers agreed as long ago as *1999* that all battery hen cages would be completely banned by 2012. Plainly, these countries did not invoke any notion of such 'technologies' in beginning the task of welfare enhancement. Surely the moral community in Australia is no less compassionate than that which exists in Europe – so why doesn't our representative government acknowledge this through meaningful reform?

26. Whilst the recent establishment of a National Animal Welfare Strategy ('the Strategy') has the potential to make advances in these regards, the fact that the relevant 'action plans' are governed by the Primary Industries Ministerial Council does not bode well. To quote the Federal Agriculture Minister, the Hon. Peter McGauran MP, the Strategy has been developed with 'various stakeholders … to reach consensus, at least a workable agreement'.[3] Yet, LFA submits, that if animal welfare is the *bona fide* objective then the animals themselves are the primary stakeholder – not primary industries representatives – and their needs should be considered paramount.

d. Conflict of interest in the primary industries' administration of 'animal welfare'

27. Sadly, the animal welfare debate is riddled with the self-justification of interest groups who do not wish their convenience or economic interest disturbed. Australia fails to progress animal welfare because those in charge of animal welfare in Australia have least reason to improve it. LFA submits that the public interest requires animal welfare reform be placed in more objective and independent hands, free of the all too evident conflict of interest of primary industries' representatives.

28. Take for example the constitution of the Animal Welfare Committee ('the AWC') which produces the model Codes of Practice subsequently adopted by States and Territories and which sits within the Primary Industries Ministerial Council system. This Committee has no animal welfare representation of any kind; instead:

> Membership of the AWC comprises representatives from each of the State Departments with responsibility for agriculture, CSIRO, the Department of Agriculture, Fisheries and Forestry – Australia and other committees within the PIMP system.[4]

29. Similarly, membership of the Primary Industries Ministerial Council 'consists of the Australian Federal, State/Territory and New Zealand Ministers responsible for Primary Industries matters'. In other words, administration of animal welfare is assigned to those bearing the most evident conflict of interest. This is further evident when regard is had to the 'objective' of the Primary Industries Ministerial Council:

> To develop and promote sustainable, innovative, and profitable agriculture, fisheries/aquaculture, food and forestry industries. [5]

30. Yet it is within this Council's system, with its quite different objectives, that an animal welfare committee – bereft of animal welfare representation – exists.

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[2] Clause 2.2.4 of the *Model Code of Practice for the Welfare of Animals, Domestic Poultry*, 4th Edition, SCARM Report 1983' provides that 'Innovative husbandry and housing systems which enhance bird welfare should be encouraged, and applied to commercial egg production as practical'.
[3] http://www.abc.net.au/rural/content/2005/s1482481.htm: *Govts to implement national animal welfare strategy*, 14/10/2005.
[4] See preface of the *Model Code of Practice for the Welfare of Animals*, Domestic Poultry, 4th Edition.
[5] Ibid; 'Primary Industries Ministerial Council'.

31. In view of this patent conflict of interest, LFA welcomes the proposal in the Bill to establish an independent National Animal Welfare Authority ('the Authority'). Plainly, in terms of s13(1) of the Bill we advocate for an expansion of Commonwealth responsibilities for animal welfare pursuant to Constitutional powers.

32. However, we query the constitution of the Authority provided for by s10 of the Bill. For too long animal welfare advisory bodies to State ministers have been overwhelmingly comprised of representatives of producer and other interests to an extent where the animal welfare representation is but nominal. It may be thought fair or reasonable to provide for such a broad based Authority, however, if the Bill's purposes in s3 are to carry a real prospect of achievement, then the Authority should comprise principally those who are independent, with an animal welfare background.

33. Similarly, the Authority should not report to the Ministerial Council as defined in Schedule 2 of the Bill,[6] where the Ministerial Council is comprised of Ministers with responsibilities to primary industries. In this regard it would appear that the Bill provides for a duplication of the existing Primary Industries Ministerial Council, comprising Australian Federal, State/Territory (and New Zealand) Ministers responsible for primary industries matters. Given the role contemplated in the Bill for the Minister (see s13(1)(d)) and for the Ministerial Council (see s14), LFA submits that this will only add to the difficulty in attaining the Bill's purposes.

34. Accordingly, we would urge an amendment to the Bill to provide for the 'Minister' to be defined to be the Commonwealth Attorney-General and the Ministerial Council to be the Standing Committee of Attorneys-General.

35. Sections 15-62 of the Bill provide for matters of a legal character. Principally, these clauses are directed to powers of entry, seizure and forfeiture and destruction of animals. Thereafter Part 4 establishes cruelty offences, prohibited conduct and regulated conduct. Penalties are prescribed for breaches. Charges or prosecutions for possible breaches must turn on a legal judgment and ultimately the legal process. Further, breaches of Part 5 (Live exports) also prescribe penalties. Part 6 (Imports of animal products) also involves a penalty for breach of s92. So too does Part 8 (Animals used for experimental purposes – see for example ss 97, 98, 106, and 115). No doubt judgements made by the Authority in applying these clauses will involve the seeking of legal advice and making of judgements of a legal kind.

[6] 'Ministerial Council' is defined to mean the Animal Welfare Ministerial Council established in accordance with the Agreement. 'Agreement' is defined to mean any agreement made between the Commonwealth and the States and Territories in relation to animal welfare.

36. By analogy, the Victorian Government's 'Working With Children Check Unit' sits within the Department of Justice and is answerable to the Victorian Attorney-General. It too administers an Act of Parliament which includes offences, regulated conduct and prohibited conduct; and it also is entrusted with administering a policy pertaining to *child* protection. Yet it does not sit within the portfolio of the Victorian Minister for Children or the Minister for Community Services. Similarly, there is no reason why a body established to administer animal welfare and ensure animal protection should be the responsibility of primary industries Ministers. This is particularly so given the conflict of interest outlined above.

37. Further, take for example the Commonwealth's Human Rights and Equal Opportunity Commission, the responsible Minister for which is the federal Attorney-General. This independent statutory body is entrusted with overseeing matters of public interest, including protection against sex discrimination and sexual harassment. These issues are particularly relevant within the employment context; but they do not come within the portfolio of the Workplace Relations Minister. Instead, they are properly administered by a statutory body and Minister whose primary interest is human rights, not industry.

38. Simply because Ministers for Primary Industries are answerable to industries which *produce* animals should not and does not mean that they should be responsible for animal *welfare*. Animal welfare is not coterminous with animal production, rather, the two objectives are utterly in conflict. That this is so is evident in the extent of suffering 'production' animals are subjected to in this country today.

e. The quantity and scale of the problem

39. The importance of addressing the public interest in animal welfare is evident when regard is had to the quantity and scale of suffering. For example:

- **Egg producing hens**: Over 90% of egg producing hens are kept in battery systems. Some three or more hens are permitted to be kept in an area the floor surface of which is about that of a vinyl album cover. Approximately 11 million hens are subjected to these conditions;
- **Intensively farmed chickens**: These are also intensively confined. Some 420 million are slaughtered annually;
- **Pigs**: Approximately 350,000 sows are kept in intensive breeding units. Some 5.7 million piglets are slaughtered annually;
- **Sheep**: Approximately 20 million lambs are mulesed each year and 3.5 million sheep are exported live annually;

- **Live export**: The foregoing figures indicate that millions of animals are transported for slaughter or sale each year. In a vast country such as Australia, they can travel very long distances in poor conditions even before they are loaded onto an export vessel;
- **Animals used in research**: More than 6 million animals are subject to scientific/research experiments in Australia annually.[7] In Victoria alone 2,780,290 were used in 2004;
- **Companion animals**: In 2002 there were at least 29 million companion animals. Each year around 13,000 dogs and more than 35,000 cats are abandoned and destroyed by animal shelters in Victoria alone. RSPCA shelters alone put down over 58,000 in the 2003/2004 year;
- **'Pest' animals**: These animals run into the many millions in total and include feral horses, donkeys (especially in the Kimberleys), feral pigs, feral cattle and camels in the Northern Territory, goats in South Australia, Western Australia and Western NSW, and, of course, foxes and rabbits. Despite their 'pest' status, these animals should be accorded protection against cruelty.

40. The above examples are not exhaustive. However, they indicate not only the extent to which the public interest in animal welfare is not being satisfied, but the enormity of the problem and the commensurate need for Parliament to implement reform in this area.

41. LFA therefore urges Committee Members to initiate this process by endorsing the Bill, and lending their support to *bona fide* national animal welfare initiatives.

[7] See *Australian Association for Humane Research* website: www.aahr.asn.au/statistics.html

3. Inspections

42. LFA supports the creation of the Authority and the appointment of inspectors to conduct matters specified by the Authority. The creation of an ostensibly independent body to administer these new animal welfare provisions is a significant improvement on the current Victorian framework, for example, which, as noted above, leaves administration and enforcement of animal welfare legislation in the hands of an inadequately funded charitable organisation.

43. However, with respect to the inspections and prosecution of breaches of the Bill there are a number of specific concerns that will need to be addressed, including:

    (a) What guarantees will be in place to ensure the Authority is able to pursue its aims of animals welfare without being hampered by competing interests within the ministerial portfolio of agriculture, trade and commerce? The scope of the Authority is broad and its national profile will require an independent, strong and consistent approach to the enforcement of new animal welfare laws, in some cases to industries and persons not previously regulated by such a body. Current government animal welfare bodies, both at State and Commonwealth levels, have had limited impact in the advancement and enforcement of animal welfare practices due to glaring conflicts of interest within their ministerial portfolios. Such an arrangement for the Authority, without strong safeguards, would render it unworkable;

    (b) Concerns over the composition of the board of the Authority and whether the board and its chair will be chosen on the basis of a well regarded commitment to agriculture and industry or animal welfare, as it is unlikely that the board will be able to serve both. Furthermore, a Chair of the board of the Authority with a well regarded record for law enforcement and animal welfare would be more suitable than a Chair chosen on the basis of purely industrial or managerial skills;

    (c) Funding arrangements for the Authority will have a major impact on its ability to undertake inspections, investigations and prosecutions. The Authority have may have all the power it needs to prosecute breaches of animal welfare provisions, but such power is meaningless without the means to resource such activities. The Victorian RSPCA, which is saddled with the role of enforcing and prosecuting animal welfare offences in Victoria estimates that its inspectorate costs $1,300,000 a year to operate, of which $150,000 is received from the Victorian government. Division 3 of the Victorian Act provides for similar mechanisms of inspections to the Bill, though in more convoluted terms. The RSPCA prosecuted only 70 defendants in the 2002-

2003 financial year, from a possible 10,000 complaints. Victoria Police prosecuted about the same number, bringing the total prosecutions for animal welfare to around 140. Admittedly, the RSPCA is more focussed on community education and deterrence than litigation, but these two priorities are not mutually exclusive. This number does not include the vast number of animal welfare offences in the food production and agricultural industries, which are protected from cruelty prosecutions by Codes of Practice. Clearly, the Authority will need to be well funded and suitably governed to avoid the same conflicts that have dogged other state departments, such as the Department of Primary Industries in Victoria;

(d) The Victorian Act is considered by those that administer it to be a difficult and convoluted Act in respect of its investigative and inspection powers and procedures. A nationally consistent approach and simplified language would make the administration of such an important Act less complicated.

44. LFA welcomes a national and consistent approach to the monitoring and enforcement of animal welfare legislation by a single national Authority. The development of generally stronger and more cohesive inspection powers will compliment the Authority's role in encouraging and enforcing a new animal welfare regime. In particular, LFA note the following points:

a. More Inspectors

45. The Authority is empowered to employ inspectors, which could signal a potential increase in the number of inspectors with a broader and more cohesive approach to animal welfare in all industries. However, clarification is needed as to whether the Authority will actually employ its own inspectors or merely delegate its powers to staff in other government bodies. The latter arrangement will severely affect the ability of the Authority to undertake its duties due to well-entrenched conflicts of interest and inadequate funding. Further scrutiny also of what class of persons will be declared as suitable for appointment as an inspector: s16(3)(a)(iv).

46. Inspectors would also benefit from receiving training and understanding of the Codes of Practice that operate in their states, as this will enable them to better identify breaches in respect of both State and Federal legislation.

b. Inspectors' general powers

47. The new general powers of the inspectors, as provided for in section 17, appear to be both appropriate and robust and allow inspectors to confidently undertake their core task of inspecting animals. The inclusion of provisions specifically dealing with the alleviation of

suffering by humane killing or the administration of analgesics are of adequate clarity to give inspectors the discretion to take appropriate action when faced with animals in various states of distress. It is important that inspectors feel empowered to make these decisions when the circumstances so direct, but equally it is important that inspectors receive adequate training to properly deal with these situations. Furthermore, it appears that the requirement for the 'animal keeper' to be notified of the inspection either 'before or on the occasion of the visit' appears to be sufficiently flexible to allow the inspectors to conduct random and unannounced visits without the burden of informing the keeper first.

c. Inspectors' power of entry

48. The Bill has provided inspectors with greater powers to permit inspectors to enter premises (other than dwellings) and vehicles (defined broadly to include vehicles, vessels and aircraft) without the consent of the occupier and without a warrant if the inspector reasonably suspects that:

    (a) the animal has sustained a severe injury and the injury is likely to remain untreated, or untreated for an unreasonable period: s18(e)(i) &(ii);

    (b) there is an imminent risk of death or injury to an animal at the place or vehicle because of an accident or an animal welfare offence: ss18(f) and 26(c)(iii);

    (c) any delay in entering the premises will result in the concealment, death or destruction of anything at the place that is either evidence of an animal welfare offence: s18(g)(i) or, being used to commit, continue or repeat an animals welfare offence: s18(g)(ii);

    (d) an animal is suffering from lack of food or water or is entangled: s19(1)(a)(i) and the person in charge of the animal is apparently not present: s19(1)(a)(ii);

    (e) there is a need to enter the vehicle to relieve an animal in pain or to prevent suffering: s26(c)(iv);

    (f) that the vehicle is being, has been or is about to be used in the commission of an animal welfare offence: s26(c)(i);

    (g) the vehicle or its contents may provide evidence of such an offence: s26(c)(ii).

49. Inspectors can also make an application to a Magistrate for a warrant: s22. There are also procedures for obtaining a special warrant where circumstances dictate urgent entry on to premises: s23. While a balance has been drawn between the rights of individuals and their

privacy and the interests of animal welfare, inspectors are given the flexibility to discard some procedures where they would frustrate or hinder the proper execution of their duties.

d. Inspectors' powers to make demands

50. In addition to the power to enter premises and vehicles, inspectors have now been given new powers to make demands for assistance and documents. These powers will facilitate investigations and allow for faster assessment of offences, and include being able to:

    (a) Demand reasonable assistance from occupants at the premises or persons in charge of vehicles, including the production of documents or the giving of information: s34;

    (b) Issue a stop signal to the person in control of the vehicle, and require the person in control of the vehicle to provide assistance to the inspector in gaining entry to the vehicle;

    (c) Demand that the person in charge of a vehicle bring it, an animal or any contents to a stated reasonable place: ss36(2)(a), or remain in control of the vehicle for a stated reasonable period: ss36(2)(b).

51. Failure to comply with these directions is an offence, unless the person has a reasonable excuse.

e. Inspectors' powers of seizure

52. Inspectors have been given greater powers to seize items and animals under the following circumstances where the inspector reasonably suspects that the animals or thing is evidence of an offence against this Bill, the seizure is necessary to prevent the animal or thing being destroyed, hidden or lost or used to commit, continue or repeat an offence, or that it has just been used in committing, or is the subject of, an animal welfare offence.

53. Furthermore, the inspector may also direct the person in charge, or owner or person in possession of the animal to make the animal available at a certain place and time. The inspector is also empowered to deal with the animal by moving it to another place or more suitable accommodation, restricting access to it, or arrange for any veterinary treatment where necessary.

54. These provide for the seizure of an animal where the inspector reasonably believes that the animal is under an imminent risk of death or injury, requires veterinary treatment, or is experiencing undue pain; and the interests of the welfare of the animal require its immediate

seizure: s41(1). The inspector may also seize the animal if the person in charge of the animal has contravened, or is contravening, an animal welfare direction or a court order about the animal: s41(2). These provisions allow for immediate relief to be provided to animals in suffering and also protect animals already the subject of welfare directions or court orders.

55. These provisions are a significantly stronger than any provisions in the Victorian Act and resemble similar provisions for child protection, see ss63 and 68 of the *Children and Young Persons Act 1989*. The Victorian Act only authorises seizure of an animal with a warrant, which must first be approved by the Head of the Department of Primary Industries and then applied for in the Magistrates' Court. Any application for such a warrant will only succeed if the inspector believes on reasonable grounds that the welfare of the animal is at immediate risk: s24E.

56. With these increased powers, inspectors are obliged to provide a receipt to the person from whom the animal or thing was seized, describing the animal or thing seized and an information notice describing why it was why it was seized. In addition, the owner or person in charge of the animal must be allowed access at a reasonable time and from time to time, so long as it not impractical or unreasonable to do so.

57. Where an animal has been seized, the inspector must return the seized animal to its owner within 28 days after the seizure. However the return of the animal can be deferred or ignored if the animal has been forfeited to the Authority, the animal is required as evidence, or the inspector reasonably believes the animal's condition may require its destruction under s61 of the Bill.

f. Authority's power of forfeiture

58. The Chair of the Authority can make a decision to forfeit an animal or thing to the Commonwealth on several grounds, including on submission that the inspector reasonably believes it is necessary to keep the animal or thing to prevent it from being used in committing, or becoming the subject of, an animal welfare offence. In making a decision to forfeit, the Chair must provide the previous owner with an information notice about the decision to forfeit. The owner is entitled to appeal this decision. On forfeiture, the animal becomes the property of the Commonwealth and the Chair of the Authority may deal with the animal in any way considered appropriate, including destroying the animal or giving it away, or by selling it.

59. According to the RSPCA, the issue of forfeiture is both frustrating and debilitating to their inspections because the Victorian Act does not allow for any forfeit of the animal without a court order: ss24H and 24I, which is both time-consuming and expensive. A common

example is where an animal is seized and nursed back to health, and the owners have made no real effort to better conditions for the animal, the RSPCA have very little recourse except to return the animal and then return some weeks or months later with another seizure order to seize the animal again. This is an appalling situation and needs to be urgently rectified, whether by means of the Bill, or by some other mechanism.

g. Inspectors' power to destroy animals

60. An inspector can destroy an animal or cause an animal to be destroyed if the animal has been seized or the person in charge of the animal has consented to the destruction, and the inspector believes the animal to be in such pain that it would be cruel to keep it alive: s61.

61. It is unclear if a veterinarian is to be consulted before such action is taken but it appears he decision to destroy rests with the inspector. It is anticipated that this power will be utilised in only extreme cases, where the animal is in a desperate condition. A provision, indicating the seriousness of such a condition and therefore compelling the inspector to properly document and prosecute the responsible persons would go long way to promoting the welfare focus of this provision.

h. Inspectors' powers to issue Animal Welfare Directions

62. Inspectors can also proactively encourage, monitor and take action through the use of Animal Welfare Directions. Where the inspector reasonably believes that a person has committed, is committing, or is about to commit, an animal welfare offence, or an animal is not being cared for properly, then the inspector can make a written and enforceable direction regarding the welfare of the animal or its environment. These directions can direct the person in charge of the animal to treat the animal in a certain way, consult a veterinary surgeon regarding the animal's health or order it be moved to different or better accommodation.

4. Animal Welfare Offences

a. Duty of care to animals

1. LFA endorses the principle of a person in charge of an animal having a duty of care to that animal: s63(1), and that a breach of this duty constitutes a serious offence: s63(2).

2. The application of the duty of care doctrine to animals will foster a higher regard for animal welfare, as well as providing a benchmark for any judicial developments in the area. There are concerns however, that the duty will not extend far enough to protect animals from psychological harm, as evidenced in animals subjected to intensive farming and production. Specifically, s63(3) appears to address the physicals needs of the animal but there is no apparent reference to any psychological effects. Accordingly, it is suggested that s63 be amended to account for both the physical and psychological needs of the animal.

b. Animal cruelty prohibited

3. LFA vigorously supports the inclusion of the basic offence that a person must not be cruel to an animal, and that the penalty prescribed for this offence accords with community standards and expectations: s63(1). The list of conduct that constitutes cruelty is indicative of some of the most common cruelty offences, but is not exhaustive and will allow the offence to develop with judicial reasoning and community standards.

4. However, for legislative clarity, LFA suggest that the words unjustifiable, unnecessary or unreasonable be removed from s63(2) and be replaced with a single defence of reasonableness in the circumstances that will apply to this section. Such a construction will eliminate the pre-prosecution assessment of whether the conduct in question is in fact unjustifiable, unnecessary or unreasonable and place the onus of proving that the conduct was reasonable in the circumstances upon the defendant. Such a defence will also force the reassessment of some practices that may be caught by the cruelty provisions but are permissible with proper safeguards, such as the use of electric fencing.

5. Similarly, where a person causes injury to an animal, then that person should be obliged to seek treatment and take all necessary action to alleviate the animal's pain and suffering. However, it is unclear why these provisions are independently stated in s65 and not included as an example of conduct amounting to cruelty in s64. Furthermore, it is also unclear why the penalties that apply to these provisions are inconsistent with those that apply to s64.

6. LFA strongly urges the Committee to ensure that all offences under the Bill be constructed to conform to the requirements of the *Commonwealth Criminal Code* and the clear statement of fault and physical elements. It is hoped that appropriate offences be constructed in light of strict liability and absolute liability and where fault is a required element, that penalties are appropriate.

c. Prohibited & Regulated conduct

7. LFA strongly supports the prohibition of conduct, which has either the intention or effect of causing injury or suffering to an animal. It is envisaged that such conduct would also be caught by s64 and that the explicit prohibition of some popular practises will lead to a raising of community awareness and standards with respect to animal welfare. LFA particularly welcomes a greater role for veterinarians in the care and welfare of animals and the use of their expertise to assess whether particular procedures are not in the interests of animal welfare.

d. Prohibited events

8. LFA strongly supports the prohibition of events that exploit, cause suffering and injury to animals. Furthermore, LFA also supports the application of serious penalties to those involved in the organising and supply of animals to such events, as well as those participants that attend and encourage the industry.

9. Ultimately though, LFA believes that the provisions in the Bill relating to cruelty and a duty of care to an animal should apply to all animals. There should be no derogation from these provisions permitted on the basis of compliance with a Code of Practice. As noted above, this is where the current system of animal welfare administered by the States and Territories is most inadequate.

5. Live Export

a. Unacceptable cruelty and suffering during the Live Export Process

63. In 1985, approximately 21 years ago, the Senate Select Committee of Inquiry into Animal Welfare in Australia ('Senate Select Committee') published its first report 'Export of Live Sheep from Australia' and concluded that the live export trade should be phased out because of its unavoidably adverse impact on animal welfare. We concur with the Senate Select Committee and urge that provision be made in the Bill to phase out live export within five years. The evidence against live export is irrefutable and can no longer plausibly be ignored by politicians.

64. In 2004, according to the Australian Bureau of Statistics, approximately 3,397,140 sheep, 637,748 cattle and 50,486 Goats were exported overseas. The respective mortality rates of these animals, associated with the practice of live export, are unacceptable. Approximately 1-2% (34,000 – 68,000) mortality for sheep, 1% mortality for cattle (6,378) together with 3-5% of cattle (19,132 – 31,887) rejected for ill health and up to 3% (1,514.58) mortality for goats.

65. There is irrefutable evidence that long distance sea transportation of animals causes stress, distress, injuries and illness. Animals exported in this manner are exposed to:
    - overcrowding;
    - oxygen deprivation;
    - heat stress;
    - pneumonia;
    - trauma;
    - diarrhoea;
    - blindness and
    - ammonia poisoning which causes respiratory ailments.

66. Statistics demonstrate that of the sheep that die during the live export process, approximately half (47%) die due to inanition, a failure to eat. This figure is deplorable but not unforeseeable. Exported sheep are required to eat pulverised pellets, a powder like substance, unpalatable and unfamiliar, with minimal time in feedlots to adjust to same.

67. Furthermore, during export, the "feed" is often contaminated by faeces and urine seeping through from the animals on the decks above. During the recent Cormo Express disaster, evidence was revealed that sheep were swimming in approximately 1-2 feet of faeces

and urine. The conditions aboard the Cormo Express were abhorrent but not uncommon or isolated to shipments suffering similar fates. The suffering of Australian animals during the live export process is commonplace and by no means exceptional.

68. Recommendations made by the Keniry Review, following the Cormo Express, although encouraging, were limited by narrow terms of reference and consequently the recommendations therein failed to eliminate current unacceptable levels of suffering and mortality occurring on each live export shipment.

b. Improved standards of practice proposed by the Bill

Export Permits

69. The Bill attempts to address the standards of practice exercised during the live export process. Section 88(1) of the Bill regulates the transport of live animals for commercial purposes from Australia by requiring the exporter to obtain an Export Permit from the Authority. The constitution of the Authority aside, the stringent application criteria in s89(3) for the granting of permits would necessarily improve regulation and compliance with Australian animal welfare standards – so long as these criteria are vigorously applied.

70. The Bill further provides in s89(3)(a) that compliance with the Australian Standards for the Export of Live-stock, Code of Practice, is a condition precedent for the granting of any Permit by the Authority. We submit this provision is commendable. However it fails to stipulate:
    - the period of compliance required for the issue of an export permit;
    - whether ongoing compliance is required;
    - who is responsible to conduct inspections to ensure compliance; and
    - whether substantial compliance is acceptable.

71. Furthermore, the Bill fails to stipulate the methodology utilised to ensure compliance with the Code of Practice.

Supervision during transport

72. In an attempt to alleviate some of the suffering experienced by the animals during the live export process, the Bill seeks to increase supervision aboard live export shipments. Currently, the supervision aboard live export shipments equates to intensive livestock production or less. By way of example, in November 2003, aboard the MV Al Kuwait, one

experienced Australian stockperson was employed to supervise approximately 103,000 sheep.

73. Section 89(d) of the Bill requires veterinarians/stockpersons to accompany the transportation. This provision, though admirable, is arbitrary and fails to stipulate the minimum number of veterinarians/stockpersons required per head, leaving the discretion as to the necessity and the requisite number to the Authority. LFA submits that a quota should be specified.

74. In addition, the Bill proposes to increase the responsibilities of the accompanying veterinarians such that pursuant to s90(1) of the Bill, a veterinarian who accompanies a transportation must report to the Authority within two (2) weeks of their return to Australia. Pursuant to s90(2) of the Bill, the Report must include details of animal deaths and the physical conditions during transportation. These provisions are laudable and could result in extremely useful data collection given that, currently, the Industry repeatedly fails to provide accurate reporting of the mortality and morbidity experienced during each live export shipment. The provisions of the Bill regarding the compilation of the veterinarians' report does not, however, stipulate the ramifications for failure to do so. This information is crucial as it should be applied in assessing future permit applications. The Bill also fails to specify the purpose of collecting the information contained within the Report, the use to which it will be put, and the sanctions that may be imposed on the exporter depending on the content of the report.

Inspectors

75. The Bill also addresses the process of loading and unloading of animals, stipulating at section 89(3)(e) that an inspector may be present at such times. Currently, the Australian Quarantine Inspection Service ('AQIS') is entrusted to inspect the animals on the wharf at loading. Lack of inspection at the wharf results in increased mortality, morbidity and suffering, both in the feedlots and in transit. On 15 December 2003, AQIS advised that AQIS inspectors had not inspected animals at the wharf for the previous 6 years. We believe that the inspector's presence at the loading and unloading of animals and during transport (pursuant to s89(3)(f) of the Bill) is essential and should be a strict requirement.

76. We commend s89(6) and ss89(7) & (8) of the Bill wherein the inspector is empowered to detain a vessel until the vessel is in compliance with requirements, failing which, the inspector is empowered to withdraw the Export Permit.

Comparable animal welfare standards in importing countries

77. Importing destinations including Bahrain, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, UAE and Yemen have negligible or non-existent animal welfare standards. In actuality, the treatment the animals endure at the importing destination, were they to occur in Australia, would be considered illegal.

78. By analogy, an important principle of international law is that of non-refoulement. This provides that no person should be forcibly returned to any country where he or she is likely to face persecution or torture. This principle acknowledges the fact that to force a person to return in such circumstances would be tantamount to the expelling jurisdiction committing the prohibited acts themselves. Australia has indicated its support for this long-standing customary rule of international law by becoming a signatory to the *1951 Convention Relating to the Status of Refugees* (see Article 33). We submit that the same legal principle should apply in respect of animals where we know export standards would be in contravention of our own laws. We therefore commend s89(5) of the Bill insofar as it attempts to address this inequity by providing that the Authority must be satisfied prior to issuing Export Permits that the importing country has comparable animal welfare standards and codes of conduct.

79. Furthermore, s89(3)(b) & (c) of the Bill provides that inspectors have the discretion to inspect all facilities including those where the animals are to be slaughtered external to Australia. We submit that although this provision is admirable and needless to say, necessary, it is unclear as to what would empower an inspector to conduct such an inspection in a foreign country, short of obtaining consent from the foreign country. Furthermore, s91(2) of the Bill states that liability remains with the vendor, subject to transfer of same, for the entire period of transportation until time of delivery. We submit that if liability is restricted to the time of delivery, the provision enabling an inspector to investigate the facilities/etc of the importer pursuant to s89(3) highlighted above would appear redundant and meaningless.

80. Presupposing the Inspector has the power to inspect the importer's facilities and exercises the discretion so afforded, the Bill fails to address potential ramifications in the event the inspector discovers that the foreign country does not have comparable animal welfare standards and codes of practice, a prerequisite to the issue of an Export Permit, pursuant to s89(5) of the Bill.

c. Economic benefits to a ban on Live Export

81. Arguments in favour of live export, espoused on purely economic grounds, are completely devoid of merit. According to the Heilbron Report, the cessation of live export wherein Australian animals would be slaughtered in Australia (pursuant to Australian animal welfare standards) and the meat products then exported overseas, would in actuality, increase Australia's gross domestic product by approximately $1.5 billion and create approximately 10,500 jobs.

82. According to the AMIEU, live exports are actually directly responsible for the loss of approximately 20,000 jobs and the closure of approximately 70 regional abattoirs. In this time of industrial unrest, we suggest that these statistics alone are an important consideration for the Federal Government.

d. Viable alternatives to Live Export

83. As noted above, in 1985 the Senate Select Committee argued that live export should be phased out. The Senate Select Committee proposed that the Federal Government promote and encourage alternatives to live sheep export endeavouring to eliminate live export entirely. In 1991-2000, during the ban on live export of sheep and cattle from Australia to Saudi Arabia, the exports of chilled and frozen mutton and lamb increased three fold, demonstrating that alternatives to live export were acceptable to the Saudi Arabian market.

84. Furthermore, the common misconception that the middle Eastern custom of eating freshly slaughtered meat or animals slaughtered pursuant to Halal methods, therefore necessitating live export of sheep and cattle, is a fallacy. Halal slaughter requires that:

    (a) the animals be faced to Mecca;

    (b) the animal be dedicated verbally to the prophet prior to having its throat cut;

    (c) the animal not to be killed in the presence of others;

    (d) the animal not to be bound before slaughter;

    (e) the animal to be killed with one swift cut to the throat, causing as little pain as possible;

    (f) the animal to be treated kindly; and

(g) Halal slaughter in Australia requires the animals to be stunned (unconscious) prior to slaughter.

85. In larger slaughter houses in the Middle East (where approximately 2000 - 3000 Australian sheep would be slaughtered per night), it is common practice to drag a sheep by its hind leg (away from the herd that is watching and waiting), forcibly turn the sheep upside down over a drain (oftentimes lying on other sheep whose throats have just been cut and are still writhing), cut the throat of the sheep (oftentimes taking three separate motions to sever the windpipe and major blood vessels) then leave the sheep, writhing and conscious, to "bleed out" on the pile of dead and dying sheep. This practice is barbaric, contrary to Australian standards and moreover, fails to meet Halal requirements.

86. In addition, approximately 70% of exported Australian sheep which are killed in the Middle East, are refrigerated following slaughter and transported to butchers throughout the Middle East for sale, consequently undermining any argument based on cultural requirements.

87. Fundamentally, we submit that it would be impossible for anyone to argue legally, economically, morally or ethically that the current status quo is acceptable. Further, it fails to align with current community standards and the public interest in avoiding cruelty to animals. The current prosecution by the WA Government and the Office of the WA State Solicitor against Emmanual Pty Ltd, a leading WA live export company, for multiple breaches of the WA *Animal Welfare Act*, is encouraging and reflective of current public interest and community standards. What remains is for our legislature to demonstrate that it too is in touch with notions of a civilised and humane society by taking prompt and decisive action to phase out live export.

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6. Animals used for experimental purposes

Overview

88. For many years now the National Health and Medical Research Council *Code of practise for the care and use of animals for scientific purposes*[8] ('the Code') has provided that scientists 'must' consider the '3Rs' (replacement, reduction and refinement in the use of animals in scientific procedures: Clauses 1.8 to 1.26).

89. However, despite this requirement to implement the 3Rs, the latest statistics suggest that more than 6 million animals were experimented on in the 2003-2004 year alone.[9] It comes as no surprise then, to learn that as a matter of common practice the Code is being flouted by research institutions which are either unwilling or unable to comply with its terms, as suggested in a recent investigation by *The Age* newspaper. In particular this investigation revealed that:

- Rather than there being a reduction in the number of animals used for scientific procedures, their numbers are dramatically increasing such that an animal is experimented on every 69 seconds in Victoria alone;
- 488,808 animals – 1339 a day, or more than 55 an hour – were used in Victoria in 2003 (significantly higher than in 1997 and above the long-term average of 449,000);
- Animals are still involved in extremely painful and stressful experiments (i.e. a group of Macaque monkeys, some only days old, had their spinal cords cut in anticipation of their performing physical tasks; in another experiment irritant acids were injected into the eyes of hatching chicks);
- Research conducted by the CSIRO in Victoria involved animals being given infections and tumours 'without pain alleviation' and included research categories which permit electric shocks 'for inducing stress', 'burning and scalding', and 'infliction of physical trauma to simulate human injury'. [10]

90. Most disturbing of all is the fact that despite the requirement in clauses 1.14 – 1.28 of the Code (dealing with 'refinement' and the need to avoid causing pain to an animal), distressing and often extremely painful experiments are still being routinely and frequently conducted, as is suggested by the above.

[8] © *Australian Government*, 2004, 7th Edition. This is currently incorporated in State and Territory laws dealing with animal experimentation (see for example, Reg 13(e)(iv) of the *Prevention of Cruelty to Animals Regulations* 1997 (Vic)).
[9] See *Australian Association for Humane Research* website: www.aahr.asn.au/statistics.html
[10] Baker, Richard, 'Sacrificed for Science', *The Age*, Saturday June 25, 2005, page 1.

91. The latest summary of statistics available from the Department of Primary Industries in Victoria also indicates that an increasing number of animals are involved in experiments which involve 'death as an endpoint' (approximately 18% of the total number of animals used per year).[11]

92. In acknowledgement of the increasing numbers of animals used, and the research community's general non-compliance with the Code, the National Health and Medical Research Council ('NHMRC') animal ethics chairperson Elizabeth Grant indicated to *The Age* that the problem lies in part, with the 'complacency' of the research community. Further, Chairperson Grant conceded that 'greater effort' could in fact be made to implement the '3Rs'.

93. The chief issue in relation to animal experimentation is therefore not whether it produces advances in medical science; but whether alternatives to the use of animals can be developed and utilised by the research community. In considering this central issue, five questions arise:

    a) What prevents or inhibits the implementation of alternatives to animal experimentation by research institutions?

    b) Why in practice does the existing regime fail to impel research into the development of alternative methodologies?

    c) How might meaningful funds towards the development of alternatives be administered?

    d) Why should we go down the path of developing non-animal methodologies?

    e) What are the existing alternative methodologies?

94. It is proposed to now address these key questions and then provide an analysis of Part 8 of the Bill, which offers a new and improved way of governing animals used for experimental purposes.

a. What prevents or inhibits the implementation of alternatives to animal experimentation by research institutions?

[11] See *DPI website*: http://www.dpi.vic.gov.au/dpi/index.htm: Prevention of Cruelty to Animals Act\ Scientific Procedures Annual returns\ 2003\ Animal use report\ 2003 summary final with tables minus DAE graph.doc

95. In short, whilst the Code requires research institutions to implement the 3Rs, there is nothing in practice that compels them to do so. That is because failure to develop or utilise animal models incurs no adverse consequences for research institutions; there is no financial incentive for their doing so; and the lack of any higher authority to assess research institutions' applications for research projects means that their natural self-interest is allowed to overcome any moral obligation to avoid animal cruelty.

96. At the outset of this submission we outlined how those who stand to benefit from the use of animals are charged with control of administering statutes and devising codes providing for standards of animal welfare. This is reflected again in the system of 'self regulation' prescribed by the Code (see Appendix 1 of the Code).

97. For example, the Victorian Act requires that an institution conducting research involving animals must comply with the Code by establishing an Animal Ethics Committee ('AEC') to oversee the conduct of the institution's experimentation activities. Amongst other things, these internally appointed AECs are charged with ensuring that the use of animals for research or in teaching is justified; giving approval to research proposals using animals; overseeing the welfare of animals used in the research; and ensuring that the institution complies with the Code and the requirement to implement the 3Rs.

98. It is difficult to see how a research institution which is in control of appointing a committee to oversee its own practices in these regards is any different from, say, putting the fox in charge of the chicken pen. In other words, it is inimical to the public interest in animal welfare to vest control of those outcomes in the scientific community – their interests are inexorably the opposite of the animals' interests.

99. In contrast, the British Home Office provides a potentially more respectable arrangement as the body charged with independently overseeing the requirements of the *1986 Animals (Scientific Procedures) Act* ('1986 Act'); and balancing the welfare needs of animals against the interests of science/industry. It provides a range of (ostensibly) independent 'teams' charged with regulating animal experimentation in the UK. For example:

    - The Licensing Team processes applications for new licences and certificates and for amendments to existing authorities and revoking licences, as necessary;
    - The Animal Procedures Committee advises the Home Secretary and the Department of Health, Social Security and Public Safety Northern Ireland Assembly Minister on matters concerned with the 1986 Act and their functions under it; and
    - The Animals Scientific Procedures Division is responsible for policy on the use of living animals in scientific procedures and for the operation of the 1986 Act in England,

Scotland and Wales. It aims to maintain the balance required by the 1986 Act between the interests of science/industry and animal welfare.

100. While a great many welfare issues continue to arise in the UK around the subject of animal experimentation, it remains that that jurisdiction has at least implemented a system for monitoring and regulating animal experimentation that has *some* semblance of independence from research institutions, and hence greater scope for their accountability.

101. Again, in Australia we lag behind other OECD countries in this regard. As long ago as 1984 it was said by Dr DeWayne H Walker, former Director of the Animal Research Centre of Murdoch University, that in regards to the subject of AECs, the concept of self-regulation by peers is 'only effective if it is truly functional and accountable to a higher body or bodies'.[12] Dr DeWayne noted that, for example, in the USA and Canada, there are statutory authorities which tabulate and consider inspection reports, generate and revise guidelines, perform periodic reviews of the inspection sites, and represent the ultimate arbitration authority and decision maker in difficult assessments'. Such external bodies are necessary because, as noted by Dr DeWayne, 'a self-contained ethics committee, responsible to itself only, is prone to mediocrity across time'. This is still the arrangement in Australia today, and it is clear that the result is not just 'mediocrity' but a severe decline in animal welfare.

102. In view of the increasing numbers of animals being used in scientific procedures, and the increasingly invasive and painful procedures in which animals are now being utilised,[13] LFA believes that as a matter of urgency animal experimentation should now be licensed and monitored by an *independent* authority, whose primary consideration is animal welfare, and *not* the interests of others who stand to benefit from such use.

103. As such, LFA urges the Committee to support the Bill's provision for a National Animal Welfare Authority. These changes in the regulation of animal experimentation are central to removing the cloak of self-interest of the existing regime of purported animal protection.

b. Why in practice does the existing regime fail to impel research into the development of alternative methodologies?

104. There appears to be more than one reason that this is so. Firstly, we know that the NHMRC is the major intermediary for the conferral of research grants in this country. To its credit, the NHMRC provides for the 3Rs as a 'must' in its Code; yet, it would appear that none of the grant money the NHMRC confers is directed specifically to the development of non-animal alternatives, so that the 3Rs which it prescribes may in practice be satisfied.

[12] Letter to the Australian Federation of Animal Societies of 10 February 1984.

105. It should be noted that a 'comprehensive' list of the NHMRC 'funding types' reveals around 40-50 different types; and yet, not one of these is directed to the development of non-animal alternatives.[14] In turn, the competition for research grants is strong, as is the pressure of peer recognition and the need to produce substantive data. No doubt these pressures prevail over questions of morality in the use of animals and indeed the wider public interest in avoiding cruelty to animals.

106. Secondly, in allocating funds for disposition by the NHMRC, the executive does not require a portion, say 20 per cent, to be allocated for the development of non-animal alternatives. The NHMRC Standard Project Grants expenditure total for 2005 appears to be some $157,791,610. Twenty per cent would thus be $31,558,322; or alternatively the total sum could be 'topped up' by the executive. In terms of the resources at the command of the Commonwealth; the total expenditure by the NHMRC for 2005 (some $415,107,760); and the deep moral challenge posed by the fate of animals subject to experimental procedures, this is a small sum. The public interest requires it anyway.

107. Ultimately, LFA believes that the conferral on a scientific body, creditable as the NHMRC may be, without specifying apportionment of funds for the development of non-animal alternatives, invites the result that we presently have, namely, the non-development of animal alternatives, despite the mandatory stipulation of the 3Rs in the Code.

108. Thirdly, there is also a cultural mindset which needs to be challenged; and that is that animals sacrificed in the pursuit of knowledge can be justified, commencing at an undergraduate level. No doubt, with the development of animal alternatives, this cultural mindset would be necessarily challenged and begin to erode. In other words, if viable alternatives were readily available, on what basis could we continue to justify using animals in experiments, given that animal experimentation is, generally speaking, contrary to animals' welfare needs?

109. In the interim, however, the importance of developing or utilising alternatives to animal experimentation is not sufficiently highlighted by research institutions or the representative bodies that guide them. For example, even the 2004 Consultation Draft of the *Australian Code for Conducting Research* (jointly produced by the NHMRC and Australian Vice

[13] Xenotransplantation, for example, may well become a profitable industry in the future, whereby animals are genetically modified and 'harvested' for their organs.

[14] 'Funding types' include items such as the 'Ageing Well, Ageing Productively Program Grant', the aim of which is to 'foster research in to ageing which crosses sectors, research disciplines and institutions to develop an authoritative evidence base to underpin more effective and well informed policy and practice'; and the 'CJ Martin Overseas Biomedical Fellowship', which provides a vehicle for full-time training overseas and in Australia in basic research within biomedical sciences.
See www.nhmrc.gov.au/funding/types/list.htm

Chancellors' Committee) makes no reference to the adoption of animal alternatives and the critical scrutiny of the animal model, despite being a guide as to 'acceptable research practices' to researchers and the institutions in which they work. Instead, this document consists of vague but high-flown phrases such as *'Researchers must act with respect for the truth and for the rights of those affected by their research, to ensure they are conducting their research with integrity'* (Clause 1.5.1) and *'Respect must also extend to sentient and insentient animals and the environment used in research'* (Clause 1.6.1). Whatever may be the high-minded intent behind such phrasing, in practice it means precious little for the animals in laboratories in terms of reducing and replacing their numbers. Rather, it simply countenances the continuance of the use of animals, save and except for the indirect acknowledgement of the provisions of the Code which relate to the 3Rs in the requirement in Clause 1.6.1 to comply with all relevant Codes of Practice.

110. It should be noted as well, that the other peak research funding body in Australia is the Australian Research Council ('ARC'). In producing the document *Descriptions of Designated National Research Priorities and Associated Priority Goals* to act as a guide to prospective applicants for grant moneys, the ARC too, not only fails to identify the development of alternatives to the animal model as a specific research priority – it fails to mention them at all. This is despite the fact that Research Priority 3 is 'Frontier Technologies for Building and Transforming Australian Industries', which includes matters as diverse as biotechnology, nanotechnology, and genomics. If, as we hope, the ARC is supportive of and sincere about the 3Rs, then the development of non-animal models should at least warrant a mention under this Priority, given that its goals are said to include 'breakthrough science, frontier technologies, advanced materials, smart information use, and promoting an innovation culture'. If nothing else, the use and development of non-animals models is at least 'innovative'.

111. In short, it is plain that the development of non-animal alternatives is not on the radar screen of the two peak bodies in Australia responsible for administering the major part of grant moneys, or funding animal experiments.

112. Needless to say, questions of morality require the public interest to be acknowledged by the intervention of the concerned member of the executive, or the concerned legislator. These are not questions where scientific experts are at a greater advantage, although their views need to be considered. Given also the cultural mindset of the scientific community, the proper satisfaction of the public interest requires the intervention of the executive to ensure that the public interest is served, and that animals are protected, reduced, and replaced over time.

113. Bearing in mind budgets of the magnitude administered by the likes of the NHMRC, the ARC and the Commonwealth Scientific and Industrial Research Organization ('CSIRO'), it would seem that the allocation of resources to the development of non-animal models for research could easily be accommodated, given the political will to do so. That funds *should* be allocated to the development of alternatives is evident when one takes account of the extent of the problems associated with current research practices using animals (see above); and also the strong public interest in avoiding cruelty to animals.

114. LFA therefore submits that meaningful percentages of each of the NHMRC, ARC and CSIRO budgets should be set aside which are capable of fostering new methodologies in medical research which do not involve animals; and utilising to a greater extent existing non-animal methodologies.

c. How might meaningful funds towards the development of alternatives be administered?

115. A viable model is provided in the example of the Dr Hadwen Trust ('the Trust'), a registered UK charity dedicated to finding alternatives to the use of animal experiments. It achieves this by funding and promoting research of the highest quality into many illnesses, to create and develop new replacement methods that can save animals and advance the understanding of human illnesses. It also helps practically implement the use of alternative methodologies by publishing reports of its research in scientific journals (some 200 reports to-date); organising and speaking at conferences to promote alternatives; submitting evidence to official enquires into the conduct and ethics of medical research and testing; participating in major debates on animal experimentation and its alternatives; and training young scientists in non-animal methods.[15]

116. Over the last 30 years, the Trust has achieved a significant number of important medical breakthroughs through the use of 'alternative' methodologies, such as providing scientists at Cambridge with a specialised piece of equipment called a Fluoroskan (to assess cancer drugs and improve cancer treatments); developing cell cultures for research into infant brain damage and multiple sclerosis; developing a three-dimensional computer model of human teeth and jawbone, for use in dental research in place of animals; and developing a cell culture model to find ways of targeting blood vessels that feed malignant tumours (for details see **Appendix 2**). Its current projects include research into asthma; brain tumours; breast cancer and lung injuries (for details see **Appendix 3**).

117. In order to achieve all of the above, the Trust usually spends in the region of £250,000 to £300,000 each year on research projects (i.e. between approximately $590,000 and

[15] See *Dr Hadwen Trust* website: http://www.drhadwentrust.f2s.com/index.html

$710,000). This represents a small percentage of the total research funds spent in Australia each year.

118. LFA believes that at least this amount of NHMRC, ARC, and CSIRO funds should be set aside for similar purposes in Australia. Alternatively, in providing grants to research institutions, the NHMRC, ARC and CSIRO should make it a requirement that a certain percentage of allocated funds (20 % for example) be spent on the development of non-animal models.

119. In contrast to the situation in this jurisdiction, the UK Government has recently established the National Centre for the Replacement, Refinement and Reduction of Animals in Research ('the NC3Rs'), an independent organisation reporting to the Science Minister and stakeholders. It provides a focus for the promotion, development and implementation of the 3Rs in animal research and testing by 'bringing together stakeholders in the 3Rs in academia, industry, government and animal welfare organizations to facilitate the exchange of information and ideas, and the translation of research findings into practice that will benefit both animals and science'.[16] It also funds high-quality 3Rs research, organises workshops and symposia to disseminate and advance the 3Rs, and develops 3Rs information resources and guidelines.

120. The NC3Rs has a Government budget of £1 million a year for the next 3 years for research grants.

121. Another example of a government giving concrete meaning to the public interest in animal welfare can be found in Germany, where $96,707,281.92 has been invested in developing alternative models to the use of animals in scientific procedures over a 17-year period (1980 to 1997).

122. Whilst the Australian Government is unable to even provide *any* dedicated funding figures to compare to these amounts, let alone a respectable sum, there is no reason why Australia should lag behind other OECD countries in these regards.

123. LFA therefore urges Committee members to promote a similar funding scheme in Australia; and to encourage the Government to provide other meaningful resources towards the practical implementation of the 3Rs.

d. Why should we go down the path of developing non-animal methodologies?

[16] See http://www.nc3rs.org.uk/landing.asp?id=27

124. First, let it be acknowledged that the use of the animal model has produced advances in medical science. However, the public interest clearly indicates that animal experimentation is *prima facie* undesirable, and should be avoided where possible.

125. This is evident in several regards; including the Code itself. Clause 1.1, for example, provides that scientific and teaching activities using animals may be performed only when they are essential in respect of various objects, such as the maintenance and improvement of human and/or animal health. Clause 1.2 states that projects using animals may be performed only after a decision has been made that they are justified, weighing the predicted scientific or educational value of the projects against the potential effects on the welfare of the animals. Further, Clause 1.3 provides that investigators and teachers must submit written proposals to an AEC for all animal projects which must take into account the expected value of the knowledge to be gained, the justification for the project, and all ethical and animal welfare aspects. Another key component of the Code, and one that is encapsulated throughout its various clauses, is the need for those undertaking scientific and research activities using animals to implement the 3Rs.[17]

126. Secondly, given the increasing number of animals being used in experiments, and the increasingly invasive ways in which they are used, it is incumbent upon us at this juncture to question the underlying moral issue of whether or not animal experimentation can continue to be justified, or whether we should now step-up our efforts to use and develop alternative methodologies.

127. Thirdly, the use of alternative methodologies does not by any means equate to fewer advances in scientific research or 'second-rate' outcomes; rather, we stand to make significant progress in medical research if we do *not* rely on animal models. This is evinced by the large number of important 'breakthroughs' that have in fact been made in the past without the use of animals, including (but not limited to):

- the discovery of aspirin;
- the development of x-rays;
- anaesthesia;
- the interpretation of the genetic code;
- the understanding of cholesterol biochemistry and familial hypercholesterolemia;
- the development of anti-depressant and anti-psychotic drugs;
- the discovery of the effectiveness of digoxin (digitalis) in treating heart failure;
- the discovery of the anti-malarial drug quinine and yellow-fever vaccine;

[17] See Clauses 1.8-1.28.

- the use of nitrogen mustard, prednisone and actinomycin D as cancer treatments; and
- the use of potassium bromide as an epilepsy treatment.

128. In most instances, had these drugs and procedures been tested on animals, they would have been abandoned. To illustrate this point, a 1912 Royal Commission into animal experiments concluded that had the animal model been relied upon, 'we should have been so mislead that probably humanity would have been robbed of this great blessing of anaesthesia.' [18]

129. There is also much anecdotal evidence which suggests that in many cases, animal-based research has in fact led science astray, and delayed medical breakthroughs because of the problems associated with extrapolating results from animals to humans. This is not to say that the use of animals has led to no medical advances; rather, at best the animal model is 'hit and miss'.

e. What are the existing alternative methodologies?

130. Today there are numerous innovative techniques which can be utilised in scientific research to ensure accurate diagnoses of illnesses and suitable treatment programs without using animals.

131. For example, an important area of medical research where non-animal models have achieved medical breakthroughs is HIV/AIDS. In particular, the isolation of the HIV virus and the discovery of the mechanism of its transmission occurred entirely without the use of animals. Dr David Ho of New York's *Aaron Diamond AIDS Research Centre* studied human cells outside the body, and discovered that AZT, a cancer drug, just so happened to impede HIV. Patients were rapidly given the drug – without animal tests.[19] This work, based entirely on human studies and test tube research, reduced the risk of death by 62% and the incidence of HIV progressing to AIDS by 73%.[20]

132. Other non-animal methodologies include DNA chip technology, acoustic microscopy (which demonstrates internal conditions using sound waves); interactive computer simulations that predict how a particular drug will affect a person's respiratory or circulatory system, diagnostic imaging technology, human stem cells, genetic research and post-mortem studies, to name but a few.

[18] See *The Judicial Inquiry Campaign*: www.vivisection.info
[19] *Proc Natl Acad Sci* USA 1985;82:7096-7100. *Nature* Vol 398 p380 1999 & 1987;325:773-778. See *The Judicial Inquiry Campaign*: www.vivisection.info
[20] *BMJ* 1997;315:1194-1199

133. A wealth of innovative technologies is also on the horizon. Research using stem cells, the Human Genome Project and the Human Proteome Project all hold the promise of cures that we would never have discovered using animal models. Furthermore, as researchers understand more how genes are involved in disease, we will be able to test potential drugs to see what effect they have on the DNA that comprises the gene.[21]

134. As noted above, the Dr Hadwen Trust, which is entirely devoted to furthering medical research using non-animal models is also able to boast many success stories whereby non-animal models have been developed and utilised (see **Appendix 2**). The Trust in itself demonstrates the feasibility of developing non-animal models.

135. Against this background of a) the public interest in avoiding pain to animals, and b) the substantial advances that can be achieved through alternative models, LFA urges the Committee to support the allocation of meaningful financial support to research institutions to develop non-animal or 'alternative' models.

136. LFA therefore commends s99(n) of the Bill, which provides that the Authority is also responsible for actively encouraging, though grants and incentive schemes, research into 'alternatives' to animal experimentation.

Analysis of Part 8 of the Bill

137. At the outset of this discussion we canvassed how the current system for regulation of animal experimentation has failed the public interest in avoiding cruelty to animals, and avoiding animal experimentation except where absolutely necessary and justifiable. What is called for in the result is a nationwide revision of how animal experimentation is regulated and licensed.

138. As such, LFA welcomes the provisions in Part 8 of the Bill, and in particular those relating to the regulatory role of the Authority. In addition to its emphasis on the development of alternative models LFA submits that the Bill represents an improvement to the current regime in the following key areas:

a. Accountability

139. As discussed above, currently responsibility for ensuring the welfare of animals used in experiments is vested in internally appointed AECs. It is simply implausible that institutions can properly self-regulate in these regards. Whilst Clause 2.2.40 of the Code requires the

[21] See *National Anti-Vivisection Society* website, FAQs: http://www.navs.org/faq/faq_main.cfm?SectionID=FAQs

AEC to submit a written report on its activities at least annually to the governing body of the institution for which it acts, the stipulated contents of that report are highly vague, and allow a great deal of scope for avoiding divulging any issues of real concern from an animal welfare point of view. Similarly, r24 of the *Prevention of Cruelty to Animals Regulations* 1997 (Vic) ('Victorian Regulations'), 'Completion of annual returns', requires that only a very perfunctory collation of information be provided to the relevant Department by the holder of a licence.

140. Section 110 of the Bill therefore adds value to the existing situation insofar as it requires an Annual report to be provided to the Authority by every 'licensed research unit'. This Report is to include detailed information as to a vast range of matters including the need for the experiment (i.e. the researcher must demonstrate that the experiment does not duplicate other experiments and that it is 'justified' in accordance with the Code); the number of animals used per category of experiment; and the number of experiments or tests on live or whole animals in which anaesthesia was used. As noted above, it is of crucial importance that research institutions be accountable to a higher authority, along the lines of the Authority as established by the Bill.

141. Of particular importance also is the consequences that apply to an institution if it violates any of the provisions in the Code. Currently, clause 2.2.33 of the Code provides that where inspections (by AECs representatives) detect activities that are non-compliant with the Code, the AEC must simply ensure that such activities cease immediately and that 'remedial action' is initiated. Further, currently non-compliance with the Code attracts no penalty units under, for example, Part 3 (Scientific Procedures) of the Victorian Act or the Victorian Regulations.[22] In contrast, s98 of the Bill provides that it is an offence to conduct research other than in accordance with the Code; and this attracts 100 penalty units. This is particularly important in relation to the provisions in the Code which are designed to ensure that minimal pain or distress is experienced by animals undergoing experiments. Similarly, s105 provides that the Authority may suspend or revoke a licence to operate a research unit or a supply unit if it is satisfied upon inspection that there has been, *inter alia*, non-compliance with the Code or failure to comply with licence conditions. Section 107 also provides that if a research operator's licence is revoked, they cannot be issued with another licence for a year. This ensures that the revocation mechanism is properly punitive (and therefore acts as a deterrent) and is not simply administrative.

b. Scrutiny

142. As noted above, currently AECs have vested in them the authority to approve research proposals involving animals which are to be conducted by those same research institutions

[22] Although it should be noted that non-compliance with the Code could expose a researcher to a prosecution under this Act, given that under s6 the Code operates as a defence.

which appoint them. LFA argues that it is absurd to suppose that in this situation proposals can be scrutinised with any degree of impartiality or perspective.

143. In contrast, Part 8 of the Bill ensures that such assessments are made by an independent and higher authority. In particular, s99 of the Bill confers on the Authority the power to issue the various types of licences necessary to conduct animal experimentation. Section 101 provides that the Authority has responsibility of granting licences to those wishing to operate a research unit, or operate a supply unit, or conduct a research project. Licences must not be granted unless the Authority is satisfied of various matters; whilst applicants must provide the Authority with a written undertaking to comply with the Code. As noted above, failure to comply with the Code attracts a civil penalty.

144. The other difficulty that arises with the existing regime dealing with animal experimentation is that as internally appointed bodies, AECs do not have the capacity to assess applications with any perspective as to what other institutions are doing or have done. They are therefore incapable of determining whether a proposal represents a duplication of another kind of experiment conducted elsewhere; or whether other alternative methodology is available for pursuing the relevant goal.

145. In contrast, under the Bill the power to issue licences must be considered in conjunction with s100(1). This provides that the Authority must establish a data bank of all experiments using animals, carried out in Australia and overseas (presumably using Annual Reports provided to the Authority in the case of Australian research). It is envisaged that having a central repository of this type of information will ensure that unnecessary duplication of experiments is avoided when the Authority comes to assess a licence application.

146. Similarly, s100(2) also provides that the Authority must establish a data bank of alternatives to experiments using animals that are carried out both in Australia and overseas. Access to this type of information will ensure that the Authority is able to properly assess licence applications in terms of their necessity – in keeping with the 3Rs and the requirement to consider 'replacing' animal experiments with other methods.

c. Transparency

147. As noted by *The Age* in its recent investigation, little is known about what goes on inside laboratories in Australia because of privacy requirements, confidentiality agreements, competition between institutions and the commercial sensitivity of the research. In the result, institutions currently have too much control over the animals they use; including the power to hire and fire the AECs that oversee what they do.

148. In contrast, by having a stringent national reporting criteria (i.e. under s110 as noted above), and central repository of statistical information (s100), the public will have far greater opportunity to monitor the extent to which animals are being used or subjected to cruel experiments in laboratories. This is important as the public interest in these matters should outweigh any commercial concerns regarding privacy.

149. In particular, s99(l) provides that the Authority is responsible for ensuring that the public is aware that proposals for cruel experiments will be scrutinised (contrast this with the experiments conducted by CSIRO detailed above, which the public were only alerted to following the publication of a Melbourne journalist's investigation).

150. Furthermore, s102 provides that the Authority must ensure that notices of an application for a licence are published in a newspaper circulating in the locality of a research unit and a different newspaper circulating nationally; including when and where the licence application will be assessed.

151. Section 104 then provides that any person is entitled to appear before the Authority to object to the proposed grant of a licence. This is a tremendous opportunity to ensure that the animal experimentation industry is not 'self-regulated', such that it flouts the wider public interest in avoiding animal cruelty.

d. Fundamental Safeguards

152. There is much anecdotal evidence in Australia and other parts of the world to suggest that sadly, in practice, animals used in scientific procedures are often exposed to severe pain without the benefit of anaesthesia or analgesics.[23] It is important, therefore, that our legislation dealing with animal experimentation includes some fundamental safeguards to ensure that this does not occur.

153. Section 108 of the Bill is commendable insofar as it includes an explicit requirement that every animal used in a research unit be anaesthetised where there is likely to be pain. Similarly, the operator of a research unit must provide analgesics to avoid causing an animal pain at any point in the procedure or following a procedure.

[23] See, for example, Lyons, Dan, *'In a Collapsed State, Xenotransplantation Research, a case study of Home Office enforcement of Animal Experimentation Legislation':* Uncaged Campaigns submission to Home Office Memorandum, *'Imutran Xenotransplantation Research'*, Submitted to Home Office Affairs Committee in 2003; Uncaged Campaigns (2000).*Diaries of Despair*; Johnston,L.and Calvert,J.(2000).*Terrible despair of animals cut up in name of research,* Daily Express UK,21 September 2000, RSPCA (2000) *Claims of animal suffering in transplant research triggersalarm*, RSPCA press release,21 September 2000; Dr.Maggy Jennings (2000), Witness statement presented in the High Court of Justice Chancery Division between Imutran Ltd.and Uncaged Campaigns Ltd.,10 October 2000; Mr.J.Straw: Hansard reports of written answers to parliamentary questions, 29 November 2000.

154. LFA supports the inclusion of these provisions, however, it is suggested that their importance should be stressed to a far great degree by providing that failure to comply with them attracts a penalty. The penalty should be on a par with the same penalty that would apply under, for example, s10 of the Victorian Act, in respect of aggravated cruelty.

APPENDIX 1

CODES OF PRACTICE AS A DEFENCE TO PROSECUTION

All animals should be protected by legislation. However, the main State and Territory animal welfare acts are by and large analogous, in that compliance with a code of practice is a defence to any derogation from the welfare standards in the Acts. Codes of practice are generally voluntary and unenforced. LFA submits that it is unacceptable that not all animals receive the benefit animal of animal protection laws.

The following outlines the legal provisions for this situation as it applies in each State and Territory.

ACT: *Animal Welfare Act 1992*

Part 2 of the Act (ss 7-20) lists numerous animal welfare offences. Section 20 provides, however, that this Part - with some exceptions - does not apply if the conduct making up the offence was in accordance with an approved code of practice.

NT: *Animal Welfare Act 2005*

It is a defence to a prosecution under s79 of the Act if the defendant establishes that the act or omission constituting an offence, or an element of the offence, was in accordance with an adopted code of practice. Section 21 also says that the Minister may exempt a person or class of persons from complying with the Act or regulations, or provide that they do not apply to an animal or class of animals.

SA: *Prevention of Cruelty to Animals Act 1985*

Section 43 provides that nothing in this Act renders unlawful anything done in accordance with a prescribed code of practice.

QLD: *Animal Care and Protection Act 2001*

Section 15 of the Act provides for compulsory compliance with some codes of practice under regulation (where the animal welfare risk is perceived significant enough). Several offence exemptions, however, are listed in Part 6 (ss 40-47).

Section 40(1) provides there is an exemption for an offence constituted by an act or omission if the act or omission complies with a relevant code of practice or scientific use code. Section 40(2), however, provides that if the code is incomplete on how an act may be done, (or the person doesn't properly comply with it) it is only an offence exemption if the defendant complied with any duty of care the defendant owed to the animal under s17.

Section 41-45 contain other offence exemptions, such as reasonable killing of feral animals (s42), fishing using certain live bait (s44) and slaughter under religious faith (s45).

WA: ***Animal Welfare Act 2002***

Part 3, s19 of the Act provides that a person must not be cruel to an animal, and lists cruel acts. However, there are several defences to this contained in ss20- 30, including s25: acting in accordance with a relevant code of practice. Section 84 provides that breach of a code of practice should be taken into account by Court, but is not sufficient on in its own to prove cruelty. Section 85 further provides that the fact a person charged with an offence under Part 3 killed an animal, or did something to contribute to the death of an animal, is not sufficient on its own to prove the cruelty offence.

NSW: ***Prevention of Cruelty to Animals Act 1979***

Part 2 of the Act contains a list of cruelty offences, and prohibits certain practices involving cruelty to animals, such as bull-fighting and game-parks.

Section 24 contains certain defences. A person is not guilty of the offence if the act involved (in the defined circumstances) branding, castrating, dehorning, tailing or mulesing the animal, feeding a live animal to a lawfully kept predatory animal, or destroying the animal for the purpose of producing food for human consumption. There are also offence exemptions to acts done in accordance with the precepts of the Jewish religion or of any other prescribed religion, or for the purpose of carrying out animal research in accordance with the provisions of the *Animal Research Act* 1985.

Under section 34, compliance, or failure to comply, with any guidelines or codes of practice (as guidelines) that are prescribed or adopted under the regulations is admissible in evidence in proceedings under the Act of compliance, or failure to comply, with the Act or the regulations.

TAS: ***Animal Welfare Act 1993***

The Tasmanian Act is also different from the other states and territories in that compliance with a code of practice does not appear to be a defence to any derogation from the welfare standards of the Act. The only mention of Codes of practice is in s34, which provides that the Minister may, on the recommendation of the Advisory Committee, approve a Code of Practice to regulate (a) the

carrying out of animal research and (b) the functions and procedures of Animal Experimentation Ethics Committees.

Section 6 stipulates that a person who has the care or charge of an animal has a duty to take all reasonable measures to ensure the welfare of the animal, with ss7-12 listing cruelty offences. Immunity from action or proceeding is only provided for if the person is acting in good faith in accordance with s48.

APPENDIX 2

ACHIEVEMENTS BY THE DR HADWEN TRUST (UK) UTILISING NON-ANIMAL METHODS IN SCIENTIFIC RESEARCH

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- **The Draize eye test**

  In the 1970s the Trust funded the first-ever research into replacing the Draize eye test - in which chemicals are tested for irritancy by dripping them into the eyes of rabbits. Work published by Trust researchers in the 1980s made a major contribution to the alternative methods now widely used in place of rabbits. The annual number of rabbits used in the UK for eye irritation tests have decreased by almost two thirds over the past eleven years, saving some 28,750 rabbits from painful eye tests.

- **Diabetes**

  Trust funding enabled new cell culture techniques to get off the ground at Birmingham University for research into diabetes. A pure strain of pancreas cells was established that could survive in culture in the laboratory for long periods, and continued to produce insulin. As a result this researcher eliminated the use of animals in his research, replacing some 200 rodents per annum by using cultured cells instead.

- **Cancer therapy**

  The Trust provided scientists at Cambridge with a specialised piece of equipment called a Fluoroskan, to assess cancer drugs and improve cancer treatments without animals. The result was the development of a miniaturised cell culture technique for rapidly assessing the effectiveness of new anti-cancer drugs. The research had direct clinical benefits too: tiny fragments of tumour tissue taken from cancer patients for diagnosis can be used in the test tube to find the best treatment combinations for each individual patient, instead of relying on a hit and miss approach.

- **Sleeping sickness**

  Sleeping sickness is a fatal tropical illness caused by a microscopic parasite. Research into sleeping sickness routinely involves infecting mice and rats with the disease-causing parasite. Trust research successfully found a way to grow a special form of the parasite in the test-tube instead of in animals. The laboratory that developed this alternative technique now uses it to replace around 100 animals each year.

- **Botulinum testing**

  Botulinum toxin, used for treating severe nerve-muscle disorders, is routinely tested in mice to ensure that this highly toxic drug is produced in accurate, standard doses. The severe

animal tests cause paralysis and death. Trust funds helped to develop a test-tube method for assessing botulinum toxin, the use of which has saved more than 10,000 mice per year for this purpose at one testing laboratory.

- **Brain research**

  Researchers at Oxford University used an innovative technique called TMS (transcranial magnetic stimulation) to study the human brain. TMS safely and temporarily disrupts the functioning of the human brain, enabling non-invasive investigations in human volunteers instead of severe brain damaging experiments on monkeys. The work by a Trust researcher with human volunteers replaced the use of some 12 to 21 monkeys over a period of three to five years. The scientists at Oxford are now actively engaged in teaching the new technique to other researchers working in the same field, and increasing the use of TMS as an alternative to animal experiments.

- **Infant brain damage**

  Trust funds established cell cult ures in a laboratory for research into infant brain damage and multiple sclerosis. Animal research involved exposing newborn rats and mice to a lack of oxygen for up to 30 minutes to induce brain damage. Cell cultures replaced the use of some 2,500 mice over a period of 5-6 years in this laboratory.

- **Dental research**

  Trust funding was critical to the development of a three-dimensional computer model of human teeth and jawbone, for use in dental research in place of animals. Dental devices and surgical techniques are often tested on animals, including dogs, cats, monkeys, pigs and ferrets. The computer model, based on measurements made from human volunteers, was the first to predict the responses of human teeth to dental treatments, such as surgery or braces. Scientists from Japan and Germany, some of whom had been doing animal experiments, are now working with the computer model - saving animals' lives.

- **Cancer**

  Trust funded researchers developed a cell culture model to find ways of targeting blood vessels that feed tumours. The cells are cultured from human veins obtained from umbilical cords from Hospital obstetric units, and normally destroyed as waste. The cells are then grown in the laboratory under special conditions that mimic those found in tumours, and molecular techniques used to identify potential targets for novel therapies, without resorting to animal experiments.

- **Brain research**

  Trust research demonstrated that new equipment, called MEG could be used to effectively and reliably study the human brain. MEG can non-invasively detect activity in the human

brain, enabling relevant research on humans, in place of experiments on animals, including cats and monkeys with recording electrodes bolted into their skulls. Such animal experiments are used to study vision, hearing, epilepsy, brain injury, pain and neurological illness. The Trust's work both validated a new brain imaging technique in humans and demonstrated that it could be used in place of animal experiments. Trust research with MEG increased our understanding of human vision and photosensitive epilepsy in children.

- **Drug selection without animals**

  Trust researchers at Strathclyde University developed a brand new method of identifying potential drugs without animal experiments. The non-animal technique, called capillary electrophoresis, has provided the first rapid method of selecting drugs that act by binding to genes. The new technique is effective, quick, and has enormous potential to become a routine part of drug discovery. It is now being used in a major programme to select anti-malaria and anti-cancer drugs, without animals. These drugs would normally have been selected by tests in mice infected with malaria or implanted with tumours. There has already been interest from the World Health Organisation in two of the drugs identified by the Strathclyde team.

- **Pain research**

  Much pain research has been on rodents, monkeys, and cats, but results from animals are of limited value in understanding human pain. Knowledge of human pain is essential to develop effective pain control therapies. Trust researchers at Manchester have developed a safe method of studying pain in humans. They have devised a laser pain stimulator that can be used along side brain imaging techniques, such as EEG, PET and fMRI, to non-invasively study the activity of the brain during stimulation. This method is now being used to identify areas of the brain involved in processing pain human pain, and in studies of patients with rheumatic pain.

- **Cataracts**

  Trust support helped researchers to culture human lens cells that thrive in laboratory dishes, and can be used in place of animals in cataract research. Cataracts affect the lens of the eye and, if left untreated, can lead to blindness. A shortage of donated human eyes for research means that animals such as rabbits, chicks, frogs and monkeys are used instead. More than 40 cataract cell lines and 10 normal cell lines have been developed. The cell lines have been distributed to other research groups around the world and are in use in place of animals in the study of cataracts and eye development.

- **Improving cancer treatments**

  At Glasgow University a powerful computer provided by the Trust was used to improve cancer treatments and bypass the normal animal tests that involve implanting mice with

human tumours. Few cancer treatments are perfect and different therapies can be combined to improve results. Mathematical modelling, based on information from cell cultures and human clinical data, was used to predict the best combination of treatments and design improved treatment strategies for neuroblastoma, a childhood cancer of the nervous system, and non-Hodgkin's lymphoma, without animal testing.

- **Safer pregnancies**

  Equipment provided by the Trust helped researchers develop a computer model of the human placenta and foetus. The computer model, called Fetal Charlotte, can be us ed to simulate experiments as an alternative to research on pregnant animals, notably sheep, rabbits and mice. The computer model demonstrated its usefulness by explaining changes in blood-flow patterns seen in pregnant women developing pre-eclampsia. Pre-eclampsia affects around one in 20 pregnant women, and can be dangerous. Three versions of Fetal Charlotte are now in use to investigate the effects of certain heart defects and various placental malfunctions.

- **Rheumatism**

  Trust researchers pioneered techniques to enable the culture of human cartilage tissue outside the body, in laboratory dishes. This enabled humane research into rheumatism without the use of painful animal tests, in which chemicals or bacteria are injected into the joints and paws of rabbits, rats and mice. The culture techniques were extended to include the laboratory study of other tissues from patients, and resulted in the discovery of chemical and structural changes, which occur in rheumatism. Further research revealed the first detailed understanding of how steroid and anti-malarial drugs, used to treat rheumatism, actually work. This knowledge assisted research to develop better rheumatism treatment without the unpleasant side effects of steroids.

- **Diabetes**

  Many diabetics suffer problems with their blood circulation that can lead to serious complications and ultimately blindness and kidney failure. To study these problems some scientists use diabetic rabbits and rats, although the diabetic condition in these animals differs from that in humans. Trust funded research showed that a safe and non-invasive technique, Laser Doppler perfusion imaging, could be used to directly investigate the circulation in tiny blood vessels of human volunteers. Detailed reactions of human blood flow to chemicals were measured for the first time, and differences between the responses of diabetics and healthy volunteers identified.

- **Origins of heart disease**

  At Southampton General Hospital, trust-funded scientists successfully developed safe methods of studying the arteries of young children, whose growth had been followed since

birth. The results have helped to explain why sufferers of heart disease and stroke are more likely to have been small at birth. Some scientists experiment of pregnant rats, guinea pigs, sheep or pigs to investigate this, restricting the size of the foetus by surgery or diet. In contrast the Trust's relevant research demonstrated a way to study the problem in humans without animal experiments.

- **Alzheimer's disease**

  Alzheimer's disease is incurable and its causes unknown, despite experiments on monkeys and genetically engineered mice. Groundbreaking research at Manchester University, utilising human brain tissue, has shed light on risk factors involved in developing Alzheimer's disease. Trust-funded scientists have found two types of virus associated with the brains of Alzheimer's sufferers. These results show that a nti-viral drugs could provide a way of tacking the disease and slowing the deterioration of AD patients.

- **AIDS**

  The Trust funded AIDS research that focused on cell culture work. This research shed light on how the virus enters the brain and helped in the development of a new AIDS drug. Dextrin sulphate was i dentified as effective against the virus in cell culture tests, and is now undergoing large-scale clinical trials. The development of dextrin sulphate has been highly unusual in that it was studied extensively in the test tube and it reached clinical trials in a relatively short time. If the trials go well, dextrin sulphate, used as a vaginal gel, could protect millions of women worldwide, who are at risk of HIV infection, especially those in societies where women have little power and find it impossible to ensure male partners use condoms.

- **Alternatives in education**

  The Trust has been a major sponsor of the NORINA database, probably the biggest single source of information on alternatives in education that is updated monthly. It now contains details of over 3,600 audiovisual aids and other alternatives to using anima ls or animal dissections in education and is freely available to lecturers, teachers and students worldwide via the Internet. The Trust also helped to fund a video produced by the humane education group InterNICHE that demonstrated the value and use of alternatives in higher education. More than 1500 copies of the video have been distributed to teachers, students and campaigners in 55 countries, and copies have been shown at national and international conferences. The video has been now translated into 8 different languages.

- **New test for liver disease**

  At Newcastle University, Trust research led to the development of a simple non-invasive test based on patient's saliva for a form of life-threatening liver disease. This innovative test can be used to monitor the progress of the disease and the effects of treatments. Human cell

cultures were used to provide new information about the cellular and molecular mechanisms of the illness, in place of experiments on rodents and tissues from dogs.

- **The UK Human Tissue Bank**

  Scientists often have difficulty in obtaining a regular supply of human tissues, and consequently resort to using animal tissues instead. Animals are bred and killed in laboratories specifically for their tissues. Some types of human tissue, such as skin, is readily available as waste from cosmetic surgery, but tissues from vital organs such as liver or heart is much harder to obtain. Trust funding helped to establish the first tissue bank in the UK to provide a reliable supply of ethically sourced human tissue for biomedical research on a national basis. The UK Human Tissue Bank is based at Leicester and encourages research approaches that use human tissue as an alternative to animals.

- **Identifying microbes**

  Novel analytical techniques that can be used to identify disease-causing microbes were developed with Trust funding at the Public Health Laboratories in London. Normal methods of microbe identification rely on tests using rabbits and guinea pigs. The non-animal technique uses a pulse of laser light to generate a unique 'fingerprint' pattern for each type of microbe that can be used to identify disease-causing culprits. The new technique is able to identify different forms of bacteria that were previously only distinguishable by animal tests that involved inducing abscesses on guinea pigs legs. This research also revealed important new information about infectious bacteria.

- **Fighting brain tumours**

  A cell culture study of human brain cells revealed that naturally occurring substances found in citrus fruits might help to fight brain tumours. In some laboratories animals are used to investigate brain tumours and the potential of new treatments. Tumours are implanted into rats, but such tumours differ considerably form those in the human bra in the way they grow and spread. This project was the first detailed research into the effect of citrus flavonoids on human brain tumours in culture. Largely on the basis of these Trust-funded studies, clinical trials on patients are now underway to see if citrus flavonoids can help treat patients with the most malignant form of brain tumour.

- **Diet and health**

  In the 1980s the Trust helped to fund the first-ever definitive 10-year study of the health effects of vegetarianism and veganism at Oxford University. The study involved monitoring thousands of volunteer vegetarians, vegans, meat- and fish-eaters, to compare levels of illness and death. Animals such as pigs, rabbits, dogs and monkeys had all been used to look at the effect of diet on health, but the Oxford study used epidemiology, or population research, to make discoveries of direct relevance to people without causing animal suffering.

The findings were published in the British Medical Journal, and revealed that vegans ate less saturated fat and virtually no cholesterol, whilst vegetarians ate as much cholesterol as non-vegetarians. Vegans had low levels of blood cholesterol, a significant finding, as high blood levels of cholesterol are associated with an increased risk of heart disease.

APPENDIX 3

CURRENT PROJECTS BY THE DR HADWEN TRUST (UK) UTILISING NON-ANIMAL MODELS IN SCIENTIFIC RESEARCH

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- **Asthma**

  The Trust's asthma project at King's College London is investigating changes that occur in the airways of asthmatics, instead of studying rats, mice, guinea pigs or rabbits with induced asthma-like symptoms. The latest imaging and genetic techniques are being applied to biopsy samples of airway smooth muscle cells taken from volunteers with and without asthma. The project will establish the use of these human cells in culture as a research tool to replace animal experiments.

- **Brain circuitry**

  Recent developments in brain scanning technology have begun to make it possible to non-invasively trace connections between different areas of the human brain (so-called brain circuitry or networks). At present, brain connections are largely studied in other laboratories by invasive experiments on the brains of cats, rodents and monkeys. The Trust's project at the John Radcliffe Hospital in Oxford, will use non-invasive MRI diffusion imaging to study connections in the brains of human volunteers, instead of animals. This work could also shed light on our understanding of human chronic pain, and a number of neurological and psychiatric disorders in which brain circuitry is disrupted, such as schizophrenia and Parkinson's disease.

- **Brain tumour invasion**

  At the University of Portsmouth Trust-funded researchers are creating a three-dimensional culture model of human brain tumour invasion. Human brain cells are obtained from patients undergoing surgery. Normal brain cells are grown in the lab alongside balls of tumour cells (spheroids) to produce a model of brain tumour invasion. The very latest microscope and live cell imaging techniques will be used to study the model and to investigate potential anti-invasion therapies, instead of experiments in rats or mice with chemically induced brain tumours or implanted with pieces brain tumour.

- **Breast cancer**

  Breast cancer is the commonest cancer affecting women in the Western world, and the incidence is rising. Much current research uses mice implanted with pieces of tumour. At St Bartholomew's Hospital in London a Trust-funded project is developing three-dimensional multicellular models of human breast cancer and normal breast. These cell

culture models will be used to replace animals in basic breast cancer research and for the assessment of new therapies.

- **Drug testing**

  Animal tests are widely used in drug development. A wide range of different species are used to investigate how a drug is handled and cleared from the body. Rodents, rabbits, and dogs are the usually subjects in these tests, but sometimes sheep, cats, baboons or monkey are used too. The Trust is supporting the development of a computer model at the University of Sheffield to predict how drugs will behave in humans. The model is based on data from test tube studies of human drug metabolism, and aims to produce better results that unreliable animal tests.

- **Gut infections**

  A human cell culture model of the gut is being developed at Nottingham University for the study of bacteria that infect hospitalised patients. Clostridum bacteria colonise the gut of patients after antibiotic treatment, causing diarrhoea and in some cases life-threatening colitis. In many laboratories experiments on hamsters, mice and rats, purposely infected with Clostridum bacteria, are conducted to investigate this infection. A Trust Research Fellow is developing an *in vitro* model to study the interaction of human gut cells with bacteria in the test tube instead of in animals.

- **Lung injury**

  Hospital patients suffering severe breathing problems require artificial ventilation, although this itself can cause further lung injury which can be fatal. Animals are widely used to study ventilator-associated lung injury (VALI) in the search for new treatments. Lung damage is induced usu ally in rodents, but also pigs and sheep, by mechanically inflating the animals' lungs. A Trust-funded research project at the Royal Brompton Hospital in London is developing complex test tube models of VALI as alternatives to these animal experiments. These models consist of layers of human lung cells cultured on flexible membranes, that can be distended to mimic the effects of artificial lung ventilation, and methods of stretching precision cut slices of human lung tissue.

- **Non-invasive human brain research**

  The Trust was instrumental in funding early research with a new brain scanning technique called MEG. Now we are funding further research at Aston University to combine MEG with another safe, non-invasive method called MRS. Together the two techniques will complement each other and be used to study the effects of drugs on the human brain. This approach could be used to study potential treatments for illnesses such as Alzheimer's disease, Parkinson's disease, epilepsy, and mood disorders. At present these conditions are widely studied in rodents and monkeys, who purposely have their brains

damaged to mimic the symptoms of human disorders. Finding safe ways to study the effects of drugs on the human brain could help to eliminate these animal experiments.

- **Pain and painkillers**

  Animals are used extensively in pain research, primarily rodents but also dogs. A Trust Research Fellow at the Oxford Centre for Functional Magnetic Resonance Imaging of the Brain is studying human pain in volunteers, using fMRI, a non-invasive brain scanning technique. The research aims to identify areas of the brain involved in the perception of pain and to investigate how some of the commonly used painkilling drugs work, as well as studying potential new drugs without animals.

- **Septic shock**

  Septic shock is the most common cause of death in hospital intensive care units. Various treatments have been developed that are highly successful in experimental animals, but these have failed in human patients. Animal experiments involve inducing sepsis in rodents, rabbits, sheep, dogs, pigs and baboons by injecting bacteria or bacterial products, causing substantial suffering. A Trust-funded Research Fellow at Glasgow University is developing a novel three-dimensional human tissue culture model of sepsis-induced kidney failure. This model will be used to increase our understanding of kidney failure in sepsis and to explore possible therapies, without resorting to animal experiments.

- **Vaccine testing**

  A Trust-funded PhD research student at the National Institute for Biological Standards and Control is working to develop a non-animal method for testing the safety of whooping cough vaccine. The vaccine is used worldwide to prevent whooping cough in children, and at present batches of the vaccine are routinely te sted in mice. The tests are lethal and thousands of animals are used each year worldwide. Our researcher is investigating the use of 4 different human cell lines and molecular techniques for evaluating the vaccine as an alternative to the animal test.

- **Wound healing**

  Wounds that fail to heal, such as pressure sores and ulcers, affect 3% of over 60 year olds, cause significant disability and distress amongst the elderly, and cost the NHS over £1 billion annually. A test tube model of chronic wound healing would be invaluable for identifying new wound treatments and replacing experiments on animals. At present, chronic wounds are induced in guinea pigs, rabbits, rats, mice and pigs, by burning, crushing or applying chemicals, in experiments that likely to cause substantial pain and suffering. A Trust-funded PhD student at the Cardiff Institute of Tissue Engineering &

Repair is developing a cell-based model of wound healing using wound tissues from patients, as an alternative to painful animal experiments.