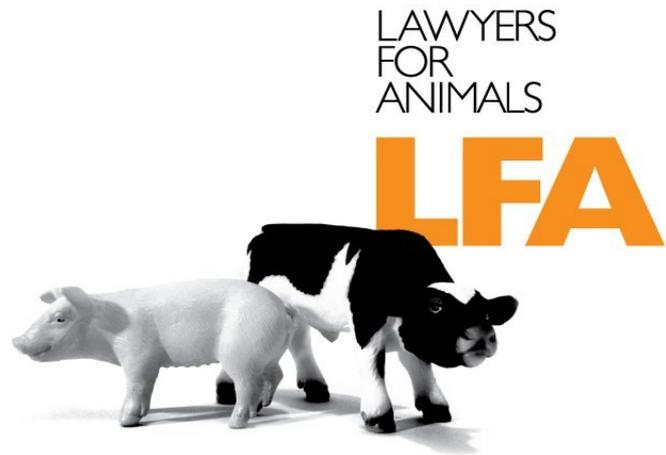


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'The Independent Consultant'

Animal Welfare Standards Public Consultation
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Sent via email to: publicconspoultry@animalhealthaustralia.com.au

5 March 2018

Dear Consultant,

Submission regarding the 'Proposed Draft Australian Animal Welfare Standards and Guidelines - Poultry' and associated 'Consultation Regulation Impact Statement'

Thank you for considering Lawyers for Animals' contribution to the public consultation on the 'Proposed Draft Australian Animal Welfare Standards and Guidelines for Poultry' ("**Draft Poultry Standards**") and associated 'Consultation Regulation Impact Statement' ("**RIS**"). Unfortunately, for the reasons below, Lawyers for Animals lacks confidence that this consultation will achieve its stated goal: "... to minimise risks to the welfare of poultry due to deficiencies in existing codes of practice and other standards in this area."¹ Lawyers for Animals is concerned that this submission

¹ Animal Health Australia, 'Proposed Australian Animal Welfare Standards and Guidelines Poultry Consultation Regulation Impact Statement' (hereafter cited as: "**RIS**"), November 2017, at p. iv. It also seems very likely to fail to reflect the 'mission' of the Australian Animal Welfare Strategy "...to deliver sustainable improvements in the welfare of all animals" in line with the stated 'vision' that "[a]ll Australians value animals and are committed to improving their welfare." Department of Agriculture and Water Resources website, viewed 1/3/2018: <http://www.agriculture.gov.au/animal/welfare/aaws>

will not affect the seemingly predetermined outcome of the consultation, namely the State and Territory governments' abdication of responsibility for animal welfare to animal industry control, as facilitated by the federal Department of Agriculture and Water Resources, and funded by Australian taxpayers.

Who we are

Formed in 2005, Lawyers for Animals (“LFA”) is a not-for-profit incorporated association based in Victoria, run by an executive committee of lawyers and with members in various Australian States and Territories.

LFA's objectives include:

1. alleviating the suffering of animals by engaging with those who create or administer laws in Australia to strengthen legal protections for animals;
2. promoting better animal welfare practices amongst animal-related industries in Australia; and
3. undertaking educational activities in an effort to dispel myths and increase awareness relating to animals and the law.

Since April 2013, LFA has also worked in partnership with the Fitzroy Legal Service to provide the Animal Law Clinic: a free legal advice service with the primary objective of improving animal welfare.

LFA's approach to the Draft Poultry Standards & RIS

LFA is guided by a philosophical commitment to anti-speciesism. The term 'speciesism' was first coined by British psychologist Richard Ryder in 1973², but gained greater prominence through Professor Peter Singer's 1975 book, *Animal Liberation*³. In a nutshell, 'speciesism' connotes the prejudice that most humans practise towards members of other animal species, based on their physical differences, while ignoring their physiological, mental and emotional similarities. Speciesism is at first more easily understood by reference to the closely related concepts of 'racism' and 'sexism'. All three probably derive from the evolutionary advantage that tribalism (and even sub-tribalism) gave our ancestors, during harsh and uncivilised times. The fact that almost all farmed animals are plant-eating, passive, prey animals - physically and mentally unequipped to challenge their apex

² Richard Ryder, 'All beings that feel pain deserve human rights', *The Guardian*, 6 August 2005 viewed 02/03/2018 at: <https://www.theguardian.com/uk/2005/aug/06/animalwelfare>

³ Peter Singer, *Animal liberation: A new ethics for our treatment of animals*, 1975, New York: New York Review

human predators - made them an easy source of fat and protein for our ancestors, during lean times. It is likely this further encourages human indifference and predatory instincts, towards such animals. When people are 'racist', 'sexist' or 'speciesist', they consider one group - almost always their own - to have superior value, and therefore, superior rights, to another physically distinct group. In all three cases, the underlying physiological, mental and emotional similarities between the groups are ignored, sometimes subconsciously rather than deliberately.

While humans and animals generally differ in levels and types of intelligence, not all humans are more intelligent than animals. But it is not through intelligence, alone, that human or animal life holds value. In discussing this question, British Enlightenment philosopher and legal scholar, Jeremy Bentham, wrote:

The day has been, I am sad to say in many places it is not yet past, in which the greater part of the species, under the denomination of slaves, have been treated by the law exactly upon the same footing, as, in England for example, the inferior races of animals are still. The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason a human being should be abandoned without redress to the caprice of a tormentor. It may one day come to be recognised that the number of the legs, the villosity [or hairiness] of the skin, or the termination of the os sacrum [the tailbone - where an animal's tail commences] are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason or perhaps the faculty of discourse? But a full-grown horse or dog, is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day or a week or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? nor, Can they talk? but, Can they suffer?⁴

Since there is ample scientific evidence that poultry experience physical pain and psychological stress in a similar way to humans⁵, as an anti-speciesist organisation, LFA strives to prevent and alleviate the suffering of poultry, as of all sentient animals.

⁴ Jeremy Bentham, Introduction to the Principles of Morals and Legislation, 1789, chapter 17, footnote

⁵ For research links and information see: United Poultry Concerns website, viewed 02/03/2018 at: https://www.upc-online.org/thinking/pain_and_suffering.html

LFA supports the normative rule that, to the extent animals are under human control or influence, humans are obligated to uphold 'The Five Freedoms'⁶ towards them. The Five Freedoms – or basic rights – of animals are:

1. freedom from hunger, thirst and malnutrition;
2. freedom from fear and distress;
3. freedom from physical and thermal discomfort;
4. freedom from pain, injury and disease; and
5. freedom to express normal patterns of behaviour.⁷

LFA is committed to the ideal of alleviating animal suffering by seeking to uphold these basic animal rights. Therefore, on principle, LFA ultimately opposes poultry and egg production due to:

- the killing of all unwanted male chicks;
- the slaughter of birds for meat;
- the slaughter of female layer birds at the end of their premium laying period - around 18 months of age (including hens used to lay 'free-range' and/or 'organic' eggs) when chickens, for instance, have a natural lifetime of around 8-10 years;
- the excessive mating of birds in highly stressful conditions in what are known as 'breeder farms' to produce fertilised eggs, from which almost all meat and layer birds are raised (potentially including those subsequently raised on organic farms), and resulting in the premature slaughter of roosters and hens used for such production;⁸ and
- the stressful and unnatural conditions endured by most if not all poultry who are not kept for their natural lifetimes in small-scale, rotational, pastured production systems with ample feed, water, shelter, and veterinary care.

⁶ An early version of 'The Five Freedoms' was enunciated by the UK Government body, the Farm Animal Welfare Council, shortly after its formation in 1979. It drew on conclusions in the 1965 'Report of the Technical Committee to Enquire into the Welfare of Animals kept under Intensive Livestock Husbandry Systems', which was commissioned by the UK Government partly in response to concerns raised by Ruth Harrison's 1964 book 'Animal Machines'. The Five Freedoms are now recognised by animal organisations worldwide, including the World Organisation for Animal Health (better known by its historical acronym: OIE); various Societies for the Prevention of Cruelty to Animals (SPCAs); and various veterinary organisations including the Australian Veterinary Association and the Federation of Veterinarians of Europe.

⁷ This version of The Five Freedoms is taken from OIE, Terrestrial Animal Health Code, Ch.7.1 Introduction to the Recommendations for Animal Welfare, viewed 1/3/2018: http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_aw_introduction.htm

⁸ Animal Liberation Victoria, 'Is being vegetarian enough?' on website, viewed 2/3/2018 at: <https://www.alv.org.au/the-facts/issues/is-being-vegetarian-enough/>

However, LFA is an incrementalist organisation, working to achieve practical benefits for animals. Therefore, LFA supports initiatives that will, on balance, improve animal welfare in both the short and long term. It is this principled yet pragmatic approach that guides LFA in its response to the Draft Poultry Standards and RIS.

Submission structure

This submission is divided into two parts:

Part 1: Procedural flaws and conflict of interest in the creation of the Australian Animal Welfare Standards and Guidelines for Poultry

1.1 Governmental framework and procedure

1.2 Towards a 'world's best practice' baseline for animal welfare

1.3 What is the Australian Animal Welfare Strategy and how does it operate?

1.4 Animal industry prefers self-regulation - but what industry wouldn't?

Part 2: Substantive proposals to improve the Draft Poultry Standards

2.1 Lack of Australian progress in poultry welfare, to date

2.2 Research and recommendations to alleviate the suffering of male chicks

2.3 Other proposals and recommendations

Conclusion

Part 1: Procedural flaws and conflict of interest in the creation of Australian Animal Welfare Standards and Guidelines for Poultry

1.1 Governmental framework and procedure

It is necessary to preface this part of LFA's submission with a brief explanation of the governmental framework and procedure for creating laws in relation to animal welfare in Australia. The Australian Constitution divides the power to make laws between the Commonwealth and the States (including the Territories).⁹ The power to make laws in a particular area can be: (1) expressed as being exclusive to the Commonwealth; (2) expressed as being exercised concurrently by both the Commonwealth and the States (with Commonwealth laws prevailing to the extent of any inconsistency)¹⁰; or (3) not expressed at all.

⁹ *Commonwealth of Australia Constitution Act*, viewed 1/3/2018:
<https://www.legislation.gov.au/Details/C2013Q00005>

¹⁰ *Ibid*, Section 109.

There are several areas of law not expressly mentioned in the Australian Constitution, and animal welfare is one of them. Such 'residual' powers vest in the States.¹¹ This means that the States have exclusive power to make laws relating to animal welfare, except where other powers held exclusively by or concurrently with the Commonwealth - such as the external affairs power (including domestic implementation of international treaties), and the trade and commerce power - overlap, and the Commonwealth chooses to enact laws in that regard. It is pursuant to such concurrent powers that the Commonwealth makes laws in relation to the live export and slaughter of animals and aspects of wild animal management (both introduced and native), such as the commercial slaughter of kangaroos. However, legislative responsibility for animal welfare rests primarily with the States and each State (and Territory) has enacted such laws.¹²

There is no constitutional provision or law to prevent any or all States from abdicating direct responsibility for the drafting of animal welfare laws to the Commonwealth. This is likely to be more attractive for States if the Commonwealth pays for what purports to be a procedurally fair process, ostensibly involving broad consultation with all stake-holders including animal industry, animal welfare groups and the broader community.

Should the outcome of a welfare consultation about farmed animals prove unpopular, the electorate is more likely to hold their respective State (or Territory) government accountable, than the federal government. Animal welfare regulations are not made by the Commonwealth, but by the States - generally by Executive Council comprising the premier/chief minister, remaining ministers and governor, and without any vote in parliament. Although the federal Minister for Agriculture and Water Resources is responsible for the design and implementation of the Australian Animal Welfare Strategy, the federal parliament has no power to make such laws, directly, so federal politicians are less likely to experience the wrath of the electorate about farmed animal welfare at the ballot box.

Some politicians have already tasted the electorate's fury over perceived cowardice in the face of evident animal cruelty. Typically, those politicians have initially been motivated by strong public sentiment to confront the cruelty of a particular animal industry, only to back down under intense pressure from animal industry and its media allies. In June 2011, Prime Minister Julia Gillard suspended live cattle exports to Indonesia following public furore over an ABC Four Corners television program featuring Animals Australia's footage of Australian cattle inside an Indonesian

¹¹ Commonwealth Parliament, 'House of Representatives Practice' (5th Edition), Chapter 1: The Parliament and the role of the House, Powers and Jurisdiction of the Houses, Legislative power, viewed 1/3/2018: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/practice/chapter1

¹² As conceded by the federal Department of Agriculture and Water Resources on its website, viewed 1/3/2018: <http://www.agriculture.gov.au/animal/welfare/animal-welfare-in-australia>

abattoir. One month later, Prime Minister Gillard announced a resumption of the trade, but paid a heavy price for succumbing to industry pressure, and ignoring public sentiment.¹³ Similarly, NSW Premier Mike Baird, effectively forfeited his political career by reversing his original announcement of a ban on greyhound racing in NSW, despite public support for the ban.¹⁴ His initial decision to impose the ban followed a damning report on the greyhound industry by a Special Commission of Inquiry headed by former High Court Justice Michael McHugh, and over 18 months of public anger after an ABC Four Corners report in February 2015 featured graphic footage of live-baiting.¹⁵

1.2 Towards a 'world's best practice' baseline for animal welfare

Being a signatory to the Convention on, and therefore a member state of, the Organisation for Economic Co-operation and Development ("**OECD**"), Australia has committed to adopting the OECD's '2012 Recommendation on Regulatory Policy and Governance'.¹⁶ This document recommends "...providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis." LFA is concerned the consultations currently being undertaken lack any real intent to properly consider and adopt 'best practice' contributions from animal welfare stake-holders and the public.

LFA commends the stated commitment of the Australian Government (through the Office of Best Practice within the Department of Prime Minister and Cabinet), "... to improving regulatory quality through best practice regulation... [including] timely use of evidence to inform decision making as

¹³ Prime Minister Gillard's approval rating fell from to 50 per cent in February 2011 to 23 per cent in early September 2011 according to Newspoll surveys. The resumption of live exports in July 2011, following a concerted pro-industry media campaign is likely to have played a significant role. Other factors likely to have contributed include strong legal censure of the proposed asylum seeker people swap with Malaysia between May and August; and announcement of carbon tax details in July 2011. Minister for Agriculture at the time of the live export suspension, Sen. Joe Ludwig, did not seek re-election. Following resumption of the trade, an August 2013 Nielsen poll of 1500 voters, commissioned by the World Society for the Protection of Animals, found that 86 per cent of those surveyed supported the gradual phasing-out of live-export in favour of a greater focus on chilled beef and lamb exports; with 67 per cent more likely to vote for a political party or candidate who promised to ban all live exports. Only 14 per cent reported that a ban proposal would cost a candidate their vote. Sue Neales, 'Banning exports a vote winner' 14 August 2013, *The Australian*, viewed 2/3/2018 at: <https://www.theaustralian.com.au/national-affairs/election-2013/banning-exports-a-vote-winner/news-story/2b98faf7975b4abe5b02971af477254c?sv=48a2e7f814f54ac54e38f3e014690083>

¹⁴ Sarah Gerathy, 'Mike Baird: How NSW Premier went from popular to political scrapheap', 19 January 2017, ABC News website, viewed 2/3/2018 at: <http://www.abc.net.au/news/2017-01-19/mike-baird-resigns-how-mr-popular-ended-up-on-the-scrapheap/8193616>
ABC News website, 'Greyhound racing: More than 60pc of people in NSW and ACT support ban, RSPCA says' 8 Oct 2016, viewed 4/3/2018 at: <http://www.abc.net.au/news/2016-10-08/greyhound-racing--60-pc-of-people-support-ban-nsw-canberra/7915334>

¹⁵ ABC News website, 'Greyhound racing scandal: NSW Government announces special inquiry amid live baiting expose', 4 March 2015, viewed 4 March 2018 at: <http://www.abc.net.au/news/2015-03-04/nsw-government-to-hold-special-inquiry-into-greyhound-racing/6280670>

¹⁶ Department of Prime Minister and Cabinet website, viewed 1/03/2018 at: <https://www.pmc.gov.au/regulation/best-practice-regulation>

required through the Australian Government's regulatory impact analysis system."¹⁷ LFA questions how such a commitment aligns with the current consultation, given the regressive nature of many of the Draft Poultry Standards and how they came to be drafted.

LFA recommends that all animal welfare regulations in Australia be reviewed with the aim of bringing them up to (or above) the level of world's best practice in all aspects, as soon as can be achieved. Naturally, this will require evidence-based economic analysis to determine the genuine (not ambit) time-frames required by industry to undertake any significant, structural reforms, and to ascertain how the cost of such reforms may best be shared between industry and consumers. In addition, new international markets may also need to be sourced for higher cost and quality, more ethical produce. Without the motivation to adopt world's best practice in animal welfare, Australia is falling behind nations of comparable wealth and stability, undermining our future productivity as well as social and environmental development. Australia's international reputation for high quality produce with more ethical credentials than our competitors is fast diminishing. This has occurred within a relatively short period, perhaps as recently as the last 20 years. The longer we fail to engage and adopt world's best practice, the greater the cost will be of doing so in the future.

1.3. What is the Australian Animal Welfare Strategy and how does it operate?

The Australian Animal Welfare Strategy ("**AAWS**") is policy body established under the auspices of the federal Department of Agriculture and Water Resources to generate model standards and guidelines (formerly, Codes of Practice) for implementation by States to create a uniform set of detailed regulations (and unenforceable guidelines) in relation to the welfare of animals. In practice, however, LFA observes that compliance with the AAWS standards, once implemented, frequently allows animal industries and their members to evade prosecution for acts and omissions that would otherwise amount to 'cruelty' under various States' anti-cruelty laws.

The Victorian government's website, on which the model 'animal welfare' standards and guidelines are published, offers the following description of and justification for the AAWS, outlining its relationship to Animal Health Australia ("**AHA**"):

Under the Australian Animal Welfare Strategy, Animal Health Australia has been commissioned to facilitate the development of nationally consistent standards and guidelines, based on the revision of the current Model Codes of Practice for the Welfare of Animals.

The welfare standards and guidelines for livestock aim to streamline livestock welfare legislation in Australia, ensuring that it is both practical for industry and results in improved

¹⁷ Department of Prime Minister and Cabinet website, viewed 2 March 2018 at: <https://www.pmc.gov.au/regulation/best-practice-regulation>

welfare outcomes. The development of welfare standards and guidelines underpins access to overseas markets and reinforces Australia's international leadership in livestock welfare.

Without such change, Australia risks losing consumer confidence and significant national and international markets.¹⁸

AHA is a not-for-profit company whose 33 members (and associate members) currently comprise: the federal and all State and Territory governments; 21 key animal industry bodies; two veterinary organisations; and the Commonwealth Scientific and Industrial Research Organisation ("CSIRO").¹⁹ The manner in which the AAWS delegates oversight of the drafting and consultation processes of model animal welfare standards and guidelines to AHA, and the likely motives for doing so, are eloquently explained and critiqued by Dr. Jed Goodfellow of Macquarie University and RSPCA Australia:

Perceptions of procedural fairness in formal decision-making processes shape people's views about the legitimacy of the decision-making body and the decisions it makes (Tyler, 1994; Tyler 2005). If people perceive the process to be unfair, whether due to bias on behalf of the decision-maker, or because they have not had an adequate opportunity to have their say, it can affect their willingness to accept the decision and to engage with future decision-making processes (Tyler, 1994). Having recognised this, governments within liberal democratic societies have promoted the notion of 'participatory democracy' to allow stakeholders and the broader community the opportunity to participate in government decision-making processes (Holmes, 2011). Australia's process for developing farm animal welfare standards incorporates participatory mechanisms including the provision of deliberative forums for key stakeholders, and opportunities for public comment on proposed drafts (see for example, AHA, 2009). Unfortunately, however, the process suffers on procedural fairness grounds due to perceived bias on the part of key decision-making institutions at various stages of the process, and the disproportionate representation of industry interests.

To achieve national consistency, Australia's standards development process is coordinated at a national level with cooperation from all jurisdictional governments. Management of the process is vested in Animal Health Australia (AHA), 'a not-for-profit public company established by the Australian, State, and Territory governments and major national livestock industry organisations' (2014a). AHA's membership includes the Australian Chicken Meat Federation, Australian Dairy Farmers, Australian Egg Corporation, Australian Pork Limited, the Cattle Council of Australia, and other peak industry bodies (AHA, 2014b). It exists to promote 'a robust national animal health system that maximises competitive advantage and preferred market access for Australia's livestock industries' (AHA, 2014a).

In 2009, AHA created a national business plan for the standards development process (Business Plan), which addresses funding, priority setting, membership of writing and reference groups, and outlines the various stages of the process. Upon review of the Business Plan it is clear to see that control over the process is largely vested within three institutions – AHA, the national Animal Welfare Committee (consisting of representatives of the Departments of Agriculture), and the relevant livestock industries. These institutions set the priorities for what standards are to be developed, provide the funding for the process, determine whether there is need for scientific research, and commission such research if it

¹⁸ Agriculture Victoria website, viewed 1/3/2018 at: <http://agriculture.vic.gov.au/agriculture/animal-health-and-welfare/animal-welfare/animal-welfare-legislation/livestock-management-legislation-and-regulations/pig-welfare-standards-and-guidelines>

¹⁹ AHA website, viewed 1/3/2018 at: <https://www.animalhealthaustralia.com.au/who-we-are/information-for-members/members/>

is deemed to be required (AHA, 2009). Once the priorities have been set, AHA is responsible for establishing a standards writing group, which is made up of representatives from the three institutions mentioned above, 'relevant independent science representation, invited consultants' and an 'independent chair' (AHA, 2009). Leading animal welfare groups, RSPCA Australia and Animals Australia, have decided not to participate in the writing groups as they have both formed the view that their involvement will have no substantive impact on the drafting process. These groups do, however, participate within the stakeholder reference group, which is responsible for reviewing and providing comment on draft standards before they go out to public consultation. Once the standards have been finalised following the public consultation phase, they are submitted to a meeting of jurisdictional agriculture ministers to be formally endorsed for implementation in each State and Territory.

The process for developing farm animal welfare standards is dominated by industry interests, if not represented through the industries themselves, then through the agency of AHA, the Departments of Agriculture, and the agriculture ministers. The control exerted by these institutions creates the appearance of a system that is heavily weighted in favour of industry interests, in which alternative viewpoints may not receive a fair hearing. Animal welfare representatives have the opportunity to provide their input to the process but the potential to actually influence substantive changes within such a forum is limited. As the Executive Director of Animals Australia, Glenys Oogjes (2011) has observed:

Whilst consensus is sought in the meetings of such reference groups, the reality of the dynamics of the process is that the livestock industries have an (unofficial) power of veto in decision making – if they determine that they cannot or will not accept a particular Standard, invariably the proposed Standard is varied (watered down) or becomes merely a Guideline.

The perception of bias within the process is also shared by the RSPCA. It has consistently raised concerns over AHA's role in the development process on the basis that, given its membership, 'it cannot be considered an independent body in [the standards development] process' (RSPCA, 2011). The result is a process that lacks procedural legitimacy and ultimately produces animal welfare standards that reflect the industry status quo, and deepen the disconnect from public expectations.²⁰

LFA adopts the above analysis and criticism of the existing process, which has led to the current Draft Poultry Standards. We submit that the current process lacks procedural fairness and fails to reflect best practice regulation, by allowing animal industry to dominate and effectively dictate animal welfare regulations. LFA recommends that the consultation process be undertaken by government, rather than the AHA, and that animal welfare groups be given primary footing in all future drafting and consultation of animal welfare regulations. Animal industry's input would certainly be required, to test the viability of any proposed animal welfare reforms, but their role would be to provide practical advice on proposed reforms, rather than to prevent such reforms being considered, researched and perhaps trialled.

²⁰ Jed Goodfellow 'Regulatory capture and the welfare of farm animals in Australia' in Animal law and welfare: international perspectives, editors Deborah Cao & Steven White, Switzerland, Springer, 2016, pp. 195-235 (Ius Gentium-Comparative Perspectives on Law and Justice) at Part 6.1: 'Over representation of Industry Interests in Standards Development'

With regard to the current usefulness of animal welfare science, we refer to Jed Goodfellow's analysis of animal industry's current influence in this field:

An issue related to the standard-setting process is the development of the science upon which such standards are supposed to be based. The Australian Animal Welfare Strategy and the Business Plan emphasise the need for animal welfare policy to be underpinned by scientific knowledge. In 2009/10, Australia invested approximately \$14.279 million in primary industries related animal welfare research, development, and extension (RD&E) (Animal Welfare RD&E Strategy, 2010)...

The largest proportion of funding is managed by livestock industry Research and Development Corporations (RDCs). The role of industry RDCs is to 'invest in R&D and innovation to improve the productivity and delivery of high quality products in order to underpin the competitiveness and profitability of Australia's agricultural, fish and forestry industries' (Commonwealth Department of Agriculture, 2012). The Commonwealth Department of Agriculture is responsible for administering the legislation that governs RDCs. The RD&E expenditure of the RDCs is funded through industry levies that are matched dollar for dollar by the Commonwealth Government (Commonwealth Government, 2011). Prominent livestock RDCs include Meat and Livestock Australia, LiveCorp, Dairy Australia, Australian Wool Innovation, Australian Egg Corporation, and Australian Pork Limited. In addition to RD&E activities, many of these organisations are responsible for industry marketing and representation functions.

The Director of the Centre for Animal Welfare and Ethics at the University of Queensland, Professor Clive Phillips (2011) has... raised the concern that, due to funding pressures, 'some [researchers] may be tempted to undertake work that has the objective of confirming that the status quo does not damage animal welfare, so that the industry does not have to modify its practices to meet community expectations of high welfare standards.' This concern has been partly supported by subsequent empirical research conducted by van der Schot and Phillips (2012) into incidences of 'publication bias' within animal welfare scientific literature. The research found that authors' assessment of animal welfare tended to support the interests of the funding agency. The data showed that the effects of new treatments in improving animal welfare were rated lower if the research was funded by industry, as compared to government, or charitable organisations. van der Schot and Phillips warn that this 'may retard progress in animal welfare development in the animal production industries in particular', and that in light of the 'changes in research funding towards more industry sponsorship, this has the potential to undermine the benefits arising from research in animal welfare.'

The priorities of industry RDCs are self-evident. They exist to promote the productivity and profitability of their respective industries. Any animal welfare RD&E commissioned by these organisations is invariably for that purpose...

Industry RDCs are of course entitled to engage in research to pursue these objectives. The problem lies in the dedication of public funds for such purposes. As a matter of good governance, public funds that are reserved for researching an issue in the public interest should not be delegated to organisations that possess priorities which may conflict with that interest. Unfortunately, the government department responsible for administering the funding arrangements – the Commonwealth Department of Agriculture – is unlikely to perceive this to be an issue as it shares the same instrumental approach to animal welfare as that of the industry RDCs. Consequently, much of the public funding dedicated to animal welfare science is directed towards research that provides little in the way of substantive improvements to welfare standards.²¹

²¹ Ibid, at 6.2 Industry Influence over Development of Animal Welfare Science

Once again, LFA adopts Jed Goodfellow's assessment of the current causes of bias in the field of animal welfare science. LFA recommends that, in future, public funds only to be expended on research conducted independently of animal industry, to avoid bias and to advance welfare.

1.4 Animal industry prefers self-regulation - but what industry wouldn't?

It is hard to imagine any profit-driven industry whose members, if permitted, would not choose self-regulation over government regulation, or (at least) dictate to government the terms on which they are to be regulated. One would not expect that an industry - such as the liquor and hospitality industry, for instance - could exercise a level of power over government to enable them to determine their own hours of service and/or acceptable noise levels, and perhaps even implement them by way of voluntary (thus unenforceable) commitment. Yet, LFA submits, the process by which the Draft Poultry Standards have thus far been developed, and by which they will (almost certainly) be finalised and implemented with minimal change at State level guarantees the poultry industry effective self-regulation. This is without any indication that key reforms required to achieve the AAWS and RIS stated aims of improving animal welfare - such as the abolition of battery cages for layer hens - will ever be undertaken by way of voluntary commitment. The current process for generating the final 'Australian Animal Welfare Standards and Guidelines - Poultry' is indicative of an elaborate public propaganda exercise, designed to resemble a procedurally fair and genuine consultation, yet delivering animal industry virtually full control of the outcome.

LFA submits that owing to animal industry's primary motivation of profit and natural inertia to change, it is unlikely to consider significant animal welfare reforms, especially to existing laws and policies, to be in its interest. If animal industry is willing to concede any substantial animal welfare improvements, it will do so on a voluntary basis, trying to avoid any legal compulsion or enforcement of its commitments. LFA considers it highly unlikely that the responsible federal Minister for Agriculture will prioritise animal welfare, social or environmental priorities ahead of short-term profitability for animal industry. Due to the conflicts of interest within this Ministerial portfolio and consequently facing AAWS public servants, LFA holds little hope that fairness and transparency will be restored to the regulatory process for farmed animal welfare.

The 2007 'Australian Model Code of Practice for the Welfare of Animals - Pigs (3rd Edition)' ("**Pig Code**") is a prime example of animal industry unwillingness to concede animal welfare improvements in model codes and regulations, as opposed to voluntary practice, making such improvements unenforceable. Throughout the consultation and drafting of the Pig Code in 2006-2007, Aus-

tralian Pork Limited (the key industry body) refused to concede the necessity of phasing-out the use of sow stalls and gestation crates, arguing that it would be too costly, despite evidence of the dire impact of such intense and extended confinement on pigs' welfare, and international examples of phase-outs already underway or completed.²² The Pig Code accordingly allowed intensively farmed female pigs to be confined to sow stalls and farrowing crates for up to five months at a stretch during each gestation period - typically, twice a year - until April 2017. Beyond April 2017, the Pig Code reduces the allowable period of intensive confinement of sows per gestation period to approximately three months per gestation cycle. At its November 2011 Annual General Meeting, Australian Pork Limited announced that its members had voted overwhelmingly to undertake a voluntary phase-out of sow stalls by 2017, in apparent contradiction of its earlier position.²³ This followed announcements by the Tasmanian Government (in June 2010) that it would introduce legislation to phase-out sow stalls by 2017, and by Coles supermarkets (in July 2010) that they would end the sale of pig-meat sourced from gestation stall systems. While the voluntary phase-out offers a welcome reprieve to hundreds of thousands of sows, it remains only voluntary, and cannot be enforced, since the regulations continue to allow confinement of sows in gestation crates and sow stalls for up to three months at a stretch.²⁴

Another example of animal industry agreeing to voluntary welfare improvements, but objecting to their implementation in law, relates to the mulesing of sheep. In 2004, under pressure from international wool markets and from legal proceedings by People for the Ethical Treatment of Animals (PETA), the Australian wool industry set itself a voluntary deadline of 2010 to phase-out mulesing.²⁵ As at 30 June 2016, only 9.2 per cent of all wool produced in Australia came from unmulesed sheep²⁶ With the exception of a NSW Farmer's Federation call for a ban in 2008²⁷, the wool industry has continued to support only voluntary welfare improvements, such as use of pain relief and analgesia.²⁸

²² For example, see: Lawyer for Animals, 'Submission concerning the Proposed Model Code of Practice for the Welfare of Animals – Pigs', 1 August 2006, viewed 1/3/2018 at: <http://lawyersforanimals.org.au/wp-content/uploads/2009/07/submission-re-proposed-model-code-of-practice-for-the-welfare-of-pigs-1-august-2006.pdf>

²³ Australia Pork Limited, Annual Report 2010-2011, at p. 3, viewed 1/3/2018 at: <http://australianpork.com.au/wp-content/uploads/2013/10/Annual-Report-2010-2011.pdf>

²⁴ Except in Tasmania, where, since July 2013, sows may only be confined under veterinary direction and for far more limited time periods - see: Animal Welfare (Pigs) Regulations 2013 (Tas), viewed 1/3/18 at: <http://dpiwve.tas.gov.au/biosecurity-tasmania/animal-biosecurity/animal-welfare/legislation-standards-guidelines/animal-welfare-standards-guidelines/animal-welfare-standards/pigs-welfare>

²⁵ Animals Australia website, viewed 1/3/18 at: <http://www.animalsaustralia.org/issues/mulesing.php>

²⁶ New Merino website, viewed 1/3/18 at: <https://newmerino.com.au/mulesing-statistics/>

²⁷ Michael Condon & Bruce Reynolds, 'NSW farmers suggest immediate mulesing ban' 7 March 2008, ABC Rural website, viewed 1/3/2018 at: <http://www.abc.net.au/site-archive/rural/news/content/200803/s2183350.htm>

²⁸ Danielle Grindlay, 'Global wool industry reviews mulesing standards, considers mandatory pain relief', 14 April 2016, ABC Rural website, viewed 1/3/2018 at: <http://www.abc.net.au/news/rural/2016-04-13/global-wool-industry-reviews-mulesing-standards-pain-relief/7323830>

Part 2 Substantive proposals to improve the Draft Poultry Standards

2.1 Lack of Australian progress in poultry welfare, to date

Eleven and half years ago, LFA prepared a 'Submission concerning the draft Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006' for a Victorian Bureau of Animal Welfare consultation.²⁹ LFA refers to and relies upon its submission, dated 30 August 2006, which may be viewed via this link: <http://www.lawyersforanimals.org.au/documents/Submission-20060830.pdf> Tellingly, almost all of the submissions made in the document remain relevant to the current Draft Poultry Standards, indicating lack of progress during this period.

2.2 Research and recommendations to alleviate the suffering of male chicks

Each year in Australia, approximately 7.8 - 12 million male chicks³⁰ hatched by the egg industry are killed during their first day of life. Guideline 10.2 of the Draft Poultry Standards provides that the "[a]cceptable method... for... humane killing... [is] immediate fragmentation/maceration for... day-old chicks." In practice, "immediate fragmentation/maceration" means that the lively young chicks are placed on a conveyor belt and ride to a point where they "... tumble on to spinning blades and are shredded to death."³¹ Despite having been aware for many decades of the evident welfare failures in gassing or emacerating day-old chicks, Australia's egg industry admits that only "... for the last five years has [it] been working on science-based alternatives."³² LFA notes that despite Australia's egg industry also admitting that the continued gassing of male chicks in sealed carbon dioxide chambers results in a slower death than maceration - making maceration their 'preferred' method³³ - draft Guidelines 10.2, 10.3 and 10.4 specifically permit such gassing, in such a manner as to "... ensure the collapse of every bird within 35 seconds of exposure to the gas."³⁴ Further, by

²⁹ Caroline Gianatti, Lawyers for Animals, 'Submission concerning the draft Prevention of Cruelty to Animals (Domestic Fowl) Regulations 2006' 30 August 2006, viewed 1/3/2018 at: <http://www.lawyersforanimals.org.au/documents/Submission-20060830.pdf>

³⁰ The figure of 7.8 million is based on 2010 data sourced by LFA showing that there were around 7,822,666 new layer hens produced in Australia in 2009-2010 to enable there to be ~11.734,000 in production in 2010, each of whom would be kept in production for approximately 18 months before being sent to slaughter - see footnote immediately above. However, the figure of 12 million plus is likely to be more current, possibly even conservative, and is reported in: Esther Han, 'Egg industry wants to stop grinding and gassing millions of male chicks to death', 11 June 2016, Sydney Morning Herald, viewed 03/03/2018 at <https://www.smh.com.au/business/consumer-affairs/egg-industry-wants-to-stop-grinding-and-gassing-millions-of-male-chicks-to-death-20160611-gpgy5s.html>

³¹ ABC Triple J HACK website, 'Shredding day-old chicks: how Australia's egg industry works' 20 July 2016 viewed 3/3/2018 at: <http://www.abc.net.au/triplej/programs/hack/chickens/7645698>

³² Ibid, quoting John Coward (sic) of Egg Farmers Australia.

³³ Ibid, paraphrasing John Coward (sic) of Egg Farmers Australia.

³⁴ Draft Poultry Standards, GA10.3

virtue of the fact that they are merely guidelines rather than standards, Guidelines 10.2, 10.3 and 10.4 fail to outlaw even less humane methods of killing, including gassing that does not render chicks unconscious within 35 seconds.

LFA wishes to highlight some positive scientific news from Leipzig, Germany, where in 2015, researchers at the University of Leipzig and Dresden - notably funded by Germany's food and agriculture department under a program named: 'A Question of Attitude - New ways for better animal welfare' - first announced their discovery of a method for determining the sex of embryos within fertilised chicken eggs, just four days into their 18 to 21 day incubation.³⁵ It was reported in 2015 that pursuant to the new method, "[s]exing currently takes about 15 to 20 seconds per egg but improvements could realistically be made to reduce it to less than 10 seconds."³⁶ Unfortunately, negative effects were subsequently observed on the successful hatching rate of female chicks subjected to the testing process (approximately 10% below average). This was suspected to be caused by the semi-invasive nature by which the optical spectroscope required to perform the test gained access to the embryo inside the egg: by using a laser beam to remove a tiny portion of shell and underlying membrane, which then allowed potential bacterial penetration.³⁷

However, in late-2017 this set-back was overcome, clearing the way for commercial development of a fully automated optical spectroscope and laser device, which will rely on pre-existing artificial intelligence to sort chicken eggs into female and male categories before the embryo has developed neurological sensitivity. By avoiding the need to remove any portion of the egg membrane, and instead keeping it intact, researchers were able to avoid the risk of bacteria penetrating the egg post-test, and thus lift the rate of successful hatchings of female chicks to normal. It all depended on which end of the egg - the sharp or the blunt pole - the scientists elected to apply the optical spectroscope. Since the membrane is thinner (so more transparent) and less adhered to the shell at the blunt pole than it is at the pointed pole, this makes it possible for the optical spectroscope to sight the embryo via the blunt pole and identify its sex, without breaching the inner membrane, which protects the embryo from bacterial infection. This latest discovery, which is described in detail in a recent, openly published report, has also been proven to "... attain a correct sexing rate above 90%."³⁸ The researchers involved also report that:

From a technical point of view, the technique offers the possibility of full automatization and does not require consumables, which is economically important for sexing of large amounts

³⁵ The Poultry Site, 'Germany Aims for Chicken Sexing in the Egg by 2016', April 2015 viewed 3/3/2018 at <http://www.thepoultrysite.com/poultrynews/34741/germany-aims-for-chicken-sexing-in-the-egg-by-2016/>

³⁶ Ibid

³⁷ Roberta Galli, Grit Preusse, Christian Schnabel, Thomas Bartels, Kerstin Cramer, Marie-Elisabeth Krautwald-Junghanns, Edward Koch, Gerald Steiner, 'Sexing of chicken eggs by fluorescence and Raman spectroscopy through the shell membrane' PLoS One 13:2, 23 February 2018, viewed 3/3/2018 at: <https://doi.org/10.1371/journal.pone.0192554>

³⁸ Ibid

*of eggs. Sexing is performed in seconds, so that male eggs are sorted out immediately after measurement. These could be used as protein source depending on national regulations, for example for fish feeding. Finally, the method improves animal welfare, as it is conducted before development of embryo sensitivity, and is therefore ethically more acceptable than culling of day-old chicks.*³⁹

Despite the widely reported 2015 breakthrough in Germany, Australian CSIRO scientists have apparently continued to focus their own research towards sexing chicken embryos on a genetic modification process by which eggs that contain male embryos will be identifiable by a fluorescent green protein marking the embryo's male chromosomes by their ninth day of incubation.⁴⁰ This technology appears to be in a less advanced stage of development, with no advances (apparently) reported since 2016.

Given that the gassing of chicks causes significant suffering (for up to 35 seconds before loss of consciousness, if draft Guideline 10.3 is followed - longer if it is not); and in view of the breakthrough alternative (described above) from Germany, LFA recommends that the following guidelines (or part thereof, as indicated) be removed from the final Draft Poultry Standards:

- the part of GA10.2 that reads: "... gas using carbon dioxide or a mixture of inert gases";
- GA10.3; and
- GA10.4.

LFA submits that the deliberate killing of healthy, day-old chicks, who are fully sentient does not meet the definition of 'humane killing'. Hence the title of Part A, section 10: 'Humane Killing', is an oxymoron insofar as it applies to these chicks in the Draft Poultry Standards. LFA recommends that in the interests of legal accuracy and truth, the amended text of draft Guideline GA10.2:

- be moved to Part B, Section B3 'Meat and laying chicken breeders' - which should be re-titled 'Meat and laying chicken breeders and chicks'; and
- become new Standard SB3.11 under the new sub-heading 'Less inhumane killing of male chicks'

LFA recognises that the new 'Australian Animal Welfare Standards and Guidelines - Poultry', once adopted, are unlikely to be reviewed for another 15 years or so.⁴¹ In view of this and recent progress in developing commercially viable alternatives to the killing of sentient male chicks by the egg industry, LFA recommends that a new, pre-emptive Standard SB3.12 be inserted in the final

³⁹ Ibid

⁴⁰ Esther Han, 'Egg industry wants to stop grinding and gassing millions of male chicks to death', 11 June 2016, Sydney Morning Herald, viewed 03/03/2018 at <https://www.smh.com.au/business/consumer-affairs/egg-industry-wants-to-stop-grinding-and-gassing-millions-of-male-chicks-to-death-20160611-gpgy5s.html>

⁴¹ The current Australian Model Code of Practice for the Welfare of Animals: Domestic Poultry (4th Edition) was generated in 2001, almost 17 years before the current review.

Draft Poultry Standards. It should appear under the newly titled Part B, Section B3 'Meat and laying chicken breeders and chicks', beneath a new sub-heading: 'Less inhumane killing of male chicks', and should read as follows:

Within 12 months of a semi or fully-automated device becoming available for purchase by and delivery to an Australian Laying Chicken Breeder establishment that can determine the sex of a live layer chicken embryo (in its egg) within 7 days of incubation - or otherwise, before the embryo develops sensitivity to pain - and can produce results safely:

- in 30 seconds or less, on average, per egg - including by sexing multiple eggs, simultaneously, over a longer period; and*
- with above 85 per cent accuracy; and*
- without negatively affecting female chick hatching or development;*

Standard SB3.11 (above) shall no longer apply to the killing of day-old male chicks except insofar as these chicks were mistakenly determined to be female embryos by the aforementioned device. Otherwise, it will no longer be acceptable to kill male chicks, under four weeks of age, unless they fall into the category of chickens requiring 'humane killing' under Standard SA10.3.

LFA submits that if a single device meeting the minimum capacity described above - with or without the additional support of genetic modification or other technology - were to operate for 12 hours per day, 5 days per week, it could determine the sex of around 7,200 fertilised eggs, and categorise around 3,060 correctly as female, to help produce up to 159,000 female chicks per year. At this (conservative) rate of operation, it should be possible to produce up to 12 million female layer hens per year through the purchase and use of 75 to 76 such devices. If this were accomplished, the poultry industry could avoid killing around 10.2 million day-old chicks in one year.

2.3 Other proposals and recommendations

LFA refers to and adopts the submissions made jointly by RSPCA Australia and Animals Australia - of which LFA is a long-standing member society - in their dissenting report concerning the Draft Poultry Standards, quoted at pages 25 to 26 of the RIS.

In summary and in addition to those previously stated under section 2.2 (above), LFA makes the following substantive proposals and recommendations to improve the Draft Poultry Standards and the process by which they are produced:

1. That a 'world's best practice' baseline be applied to the review of all animal welfare regulations in Australia, beginning with the Draft Poultry Standard, with the aim of bringing these regulations up to (or above) the level of world's best practice in all aspects, as soon as may reasonably be achieved (as discussed above).
2. That in order "... to minimise risks to the welfare of poultry due to deficiencies in existing codes of practice and other standards in this area..." - which is the stated aim of the present review in the RIS - that the current consultation be undertaken by government, rather than the industry-dominated AHA, and that animal welfare groups be given primary footing in finalising the Draft Poultry Standard (as discussed above).
3. That, in future, public funds only be expended on research conducted independently of animal industry, to avoid bias and to advance welfare (as discussed above).
4. That such new standards be introduced to each section of 'Part B Species standards and guidelines for poultry' as are required to ensure that by 2024 all cage systems for all poultry are phased-out; commencing with an immediate ban on all new cage systems from the date on which the new model 'Australian Animal Welfare Standards and Guidelines - Poultry' is implemented by each Australian State and Territory.
5. That such new standards be introduced to each section of 'Part B Species standards and guidelines for poultry' as are required to ensure that by 2028 all non-caged systems allow all poultry access to part-shaded outdoor pasture during daylight hours; with such pasture to be accessed on a rotational basis (for example, via mobile barns or roosts) to ensure the continuous availability of suitable live foraging materials, such as grasses, and to meet all other requirements for outdoor areas already stated in the Draft Poultry Standards.
6. That such new standards be introduced to each section of 'Part B Species standards and guidelines for poultry' as are required to ensure that all poultry are afforded the ability to express innate behaviours including (where relevant to the particular species): perching; nesting; dust bathing; water bathing; ground-scratching; foraging and comfort behaviours including wing-stretching.
7. That such new standards be introduced under each section of 'Part B Species standards and guidelines for poultry' as are required to ensure that by 2020 the maximum stocking density for all birds in non-cage systems does not exceed: 10 kilograms per square metre in indoor areas and 100 kilograms per 10 square metres in outdoor areas.
8. Recognising that beak trimming has already been banned in Norway, Sweden, Finland and Switzerland, that new standards be introduced to Part A section '9 Handling and husbandry' as are required to ensure that beak trimming is only permissible:
 - *when other options to reduce feather pecking and cannibalism have been implemented and exhausted;*
 - *by an accredited operator;*

- *using an infrared beam;*
- *on chicks within 3 days of hatching;*
- *to remove the tip of the beak (one-fifth) only; and*
- *once during the bird's lifetime, unless a second trim is required in exceptional circumstances to address outbreaks of severe feather pecking.*

Finally, LFA wishes to highlight several examples where battery cages are being, or have been, phased out. This indicates how far behind Australia is now falling in terms of world's best practice. A 2017 report published by Voiceless - The Animal Protection Institute, provides the following (non-exhaustive) list:

- 1992 – Switzerland bans battery cages
- 2002 – Sweden bans battery cages
- 2008 – California (US) bans battery cages, to be phased out by 2015
- 2009 – Michigan (US) passes legislation to phase out battery cages by 2019
- 2009 – Austria bans battery cages
- 2010 – Ohio (US) agrees to a moratorium on permits for new battery cage facilities
- 2012 – The European Union bans battery cages after the 1999 Hens Directive comes into effect
- 2012 – New Zealand passes legislation to phase out battery cages by 2022
- 2016 – Massachusetts (US) passes legislation to phase out battery cages by 2022⁴²

Tasmania has also taken preliminary steps to phase-out battery cages, with all new cage systems banned since 2013.⁴³ LFA submits that, at the very least, a ban on new installation of battery cage systems and a phase-out of existing cage systems over two to three years should be incorporated into the Draft Poultry Standards.

Conclusion

Intensive poultry production is most likely the primary cause of animal suffering in Australia, by virtue of the fact that it directly harms the highest number of sentient animals over the longest period. It also causes far greater environmental damage than genuine free-range production systems – sometimes known as 'pastured' – due to the concentration of animal waste. While comparable jurisdictions, such as New Zealand, have already made significant progress in phasing-out intensive farming operations; most of Australia is lagging behind. Unfortunately, Lawyers for Animals considers that the Draft Poultry Standards represent a regressive rather than progressive step in the governance of animal welfare.

⁴² Elise Burgess, Voiceless 'Unscrambled: The hidden truth of hen welfare in the Australian egg industry', Paddington 2017 viewed 02-03-2019 at: <https://www.voiceless.org.au/unscrambled-hidden-truth-hen-welfare>

⁴³ Animal Welfare (Domestic Poultry) Regulations 2013 (TAS), Regulation 5, viewed 02/03/2018 at http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/tas/consol_reg/awpr2013437/s5.html?context=1;query=5;mask_path=au/legis/tas/consol_reg/awpr2013437

Lawyers for Animals observes with significant concern that the Draft Poultry Standards fall well short of world's best practice on animal welfare and facilitate Australian animal industries' eschewal of regulation, independent oversight and enforcement. Lawyers for Animals expects those industries have adopted this position on account of the perceived impact improvements may have on their profitability and international market share. However, any argument that Australian consumers cannot afford to pay slightly higher prices for genuinely free-range poultry products, is manifestly unsound, when comparable and less wealthy nations are already doing so.

Thank you for reading this submission. Should the Consultant have any queries concerning its content, please contact Lawyers for Animals via email: enquiries@lawyersforanimals.org.au

Yours faithfully,

Nichola Donovan

President

Per: LAWYERS FOR ANIMALS INC.

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