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To whom it may concern

Thank you for the opportunity to provide comment to the *Animal Welfare Draft Bill* (the ‘**Draft Bill**’) released for public consultation on 29 April 2024. We appreciate being able to comment on the proposed reforms following recent dialogue with the Department of Environment and Water (‘**DEW**’) at the preliminary stage of drafting.

Primary Producers SA (‘**PPSA**’) is the peak industry body representing the interests of South Australian primary producers. Our members are the peak commodity organisations of South Australia. Current members include Grain Producers SA, Livestock SA, SA Dairyfarmers’ Association, SA Forest Products Association, Horticulture Coalition of SA, and the Wine Grape Council of SA.

According to the most recent PIRSA Scorecard, South Australia’s primary production sector has grown to \$18.5 billion dollars in agribusiness revenue, accounting for more than half of SA’s overseas merchandise exports and remaining the state’s single largest export sector in 2022-23. There are more than 15,300 primary production businesses, supporting over 78,000 FTEs jobs in the food and agribusiness value chain.

PPSA is also the South Australian member of the National Farmers Federation (‘**NFF**’), and we support the implementation of the NFF Roadmap for Australian Agriculture to exceed \$100 billion in farm gate value by 2030. We endorse and share the NFF’s zero tolerance for animal cruelty and believe that Australian livestock producers should be recognised by policy makers, as strong advocates of global-leading animal health and welfare outcomes.

PPSA and its member industries note that SA’s high-quality agricultural products require healthy animals and excellence in animal care, with livestock producers generating more than \$3.6 billion in revenue in 2022-23. It follows that animal welfare regulation is critical to the ongoing viability of livestock production, and its practical implementation relies on a coherent sector-wide framework, and recognition of species-specific industry practices. Indeed, the Dairy Industry has a published commitment to “Provide best care for animals and to strive for health, welfare and Best care for all our animals throughout their lives.”

While PPSA generally supports the intent of the reforms as set out in the Draft Bill, we caution the Department in drafting overly complex or prescriptive legislation that may create unjustified new risk

OUR INDUSTRY MEMBERS

or cost burden to the business of primary production. It is important to also avoid unintended consequences which may arise through poorly designed legislation and supporting regulatory instruments, which may exceed or conflict with industry best practice guidelines for animal welfare, as well as existing certification and quality assurance systems.

To improve animal husbandry and to ensure best practice care for production animals, the government needs to work in partnership with industry. PPSA believes it is essential that commercial livestock production remains the predominant skill set of members appointed to the Animal Welfare Advisory Committee ('AWAC') and is opposed to the proposal of the Draft Bill to replace the existing nomination process enshrined in the current Act. We believe AWAC must consider the practical realities of livestock production in South Australian farming systems.

As recognised in the approach to renewing the Australian Animal Welfare Strategy ('AAWS')¹:

- Australian Animal Welfare Standards and Guidelines are based on science and evidence. They take into account practicalities and costs to industry. They are also underpinned by stakeholder engagement.
- Animal industries work with governments and other stakeholders like veterinarians, animal welfare groups and research bodies to deliver optimal animal welfare outcomes domestically and, where applicable, for the international market. This role includes engagement with animal welfare standards and guidelines development and implementation.
- Many industries have also developed sustainability frameworks to guide and monitor the sustainability of industry practices into the future. Industry and the Australian Government co-invest in a range of research, development and extension activities to support continuous improvement in animal welfare.

PPSA and its members have reviewed the Draft Bill and Explanatory Guide and have further considered matters canvassed during briefings held on Friday, 16 February 2024 and Monday, 3 June 2024. Please note the attached submission lists a range of outstanding matters on which PPSA members seek further consultation with DEW, prior to finalisation of the Bill's drafting and tabling in Parliament.

If you, or the department have any queries regarding this submission, please feel free to contact me via email admin@ppsa.org.au

Thank you for DEW's careful consideration of these matters.

Yours sincerely



Caroline Rhodes
Chief Executive Officer

¹ DAFF (2024) *Renewing the Australian Animal Welfare Strategy: discussion paper*, Department of Agriculture, Fisheries and Forestry, Canberra. CC BY 4.0.

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PRIMARY PRODUCERS SA

Submission in response to the draft Animal Welfare Bill 2024:

Updating South Australia's Animal Welfare Act

CONTEXT

In this submission we make several general observations and make recommendations for consideration around the policy intent set out in the Explanatory Guide.

OUR INDUSTRY MEMBERS



PPSA at a glance

Primary Producers SA (PPSA) is the peak industry body representing the interests of South Australian primary producers.

PPSA also serves as the South Australian member of the National Farmers Federation (NFF). This ensures PPSA is directly engaged in all NFF activities including implementation of the Roadmap for Australian Agriculture to exceed \$100 billion in farm gate value by 2030.

PPSA has the capacity to provide strong representation and advocacy on behalf of the South Australian primary production sector through our membership base.

Our members are the peak commodity organisations of South Australia. Current members include Grain Producers SA, Livestock SA, SA Dairyfarmers' Association, SA Forest Products Association, Horticulture Coalition of SA, and the Wine Grape Council of SA. Each organisation is represented by a councillor on the PPSA Policy Council, to provide direction and oversee the operations of PPSA.

Our purpose

As the united voice of South Australia's primary production sector, our purpose is:

- To **advocate the interests and concerns of Primary Producers** to both State and Federal governments and community using evidence-based reasoning.
- To **present one voice** to government, both State and Federal, and the wider community on Cross-Commodity issues affecting Primary Producers in South Australia.
- To **promote Primary Production in South Australia** and ensure that the contributions and achievements of South Australian Primary Producers are recognised; and
- To **assist stakeholders and suppliers to Primary Production** where such assistance will benefit Primary Producers.

What we do

PPSA develops the South Australian primary production sector through:

1. **Engagement.** PPSA partners with government and industry to develop policies and programs that promote the social, economic, and environmental sustainability of South Australian primary production.
2. **Leadership.** PPSA acts as the conduit to the South Australian primary production sector and presents a united voice on behalf of its membership in advocacy and representative activities.
3. **Communication.** PPSA influences policy makers by promoting the contribution we make to the South Australian economy and engaging positively with government and the broader community.

GENERAL OBSERVATIONS

Introduction

Primary Producers SA (PPSA) has reviewed the Discussion Paper for the “*Updating South Australia’s Animal Welfare Act*” released as an explanatory guide to the draft Animal Welfare Bill 2024 (draft Bill). The following submission responds to the Survey Questions listed in the Discussion Paper.

We understand that the state government committed to reviewing the current Act to ensure that these laws reflect modern practices and community expectations. Australian farmers value the trust that the community places in them and know that community acceptance of the way they care for animals is essential to the agriculture industry’s success.

Good animal welfare is consistent with good farming because high quality agricultural products require healthy animals and excellence in animal care. Farmers are strong advocates of good animal health and welfare outcomes.

This submission also canvasses the growing concern of PPSA about the policy platform of the Royal Society For The Prevention of Cruelty to Animals (RSPCA) extending to production animals, we believe this apparent conflict of interest has the potential to undermine the confidence of livestock producers in operating under the legislated animal welfare regime.

As outlined, PPSA has identified a range of matters that will require further consultation with the primary production sector. While PPSA broadly supports the intent of the proposed legislative reform, we caution against creating complexity and unjustified cost impositions on primary producers arising from additional regulatory burden.

The Consultation Process

PPSA supports the circulation of the Discussion Paper to stimulate community and stakeholder engagement in formulation of the proposed draft Bill, by providing plain English explanatory notes.

On 16 February 2024, PPSA participated in a briefing undertaken by the Department of Environment and Water (DEW) to guide the drafting of the Discussion Paper and draft Bill for public consultation.

PPSA understands the policy intent of these reforms are to:

1. **Update the purpose and include objects in the Act** – to better explain why the law exists and help the reader interpret its intent.
2. **Better recognise animal sentience** – to acknowledge that animals experience feelings, both positive, such as pleasure, or negative, such as pain and fear.
3. **Broaden the definition of animal** – to allow the law to cover more types of animals by removing the exclusion of fish, and including cephalopods (such as squid, octopus, cuttlefish) for scientific purposes.

4. **Introduce a ‘duty of care’ provision** – to create a positive requirement to provide a minimum level of care.
5. **Improve regulation, oversight and transparency of the research and teaching sector** – to enable greater accountability and address community concerns.
6. **Increase the ability to administer and enforce the Act** – to provide appropriate powers and ability to hold to account people that do not meet animal welfare requirements, preventing cruelty and promoting welfare.
7. **Contemporise the governance and administrative provisions for the Animal Welfare Advisory Committee** – to ensure that animal welfare advice comes from a transparent and diverse group.

PPSA has reviewed the Discussion Paper and further considered matters canvassed during our subsequent briefing held on Monday, 3 June 2024. Please note the submission lists a range of outstanding matters on which PPSA members seek further consultation prior to finalization of the Bill’s drafting and tabling in Parliament.

A Model for Legislative Reform

PPSA acknowledges a need for improved community engagement on animal welfare outcomes.

We believe that the general community expects its food production systems to comply with national endorsed Codes of Practice, which incorporate best practice on scientific evidence and prohibit animal cruelty. In general, animal cruelty is defined as direct acts of cruelty and as neglect of animals by a person responsible for the animal’s wellbeing. Under this definition, PPSA has zero tolerance for animal cruelty.

We note the Federal Government is now in the process of public consultation, seeking input on the renewal of the Australian Animal Welfare Strategy (AAWS). Beyond government, livestock producers, industry groups and processors, there are a myriad of animal welfare interest groups, civil society and activist groups that will be engaging in resetting the national framework.

The purpose of a renewed AAWS is to “...provide a national approach to animal welfare and establish Australia’s commitment to modern, sustainable, evidence and science-based welfare practice”.² This must reflect industry best practice in livestock production systems, which are subject to ongoing review and improvement through a range of research, development and extension activities to support continuous improvement in animal welfare.

PPSA contends that to improve animal husbandry and to develop best practice for production animals, the government needs to work in partnership with industry. To champion best practice in animal husbandry, the NFF policy incorporates the following measures:

² <https://havewersay.agriculture.gov.au/australian-animal-welfare-strategy-aaws>

- Provide greater resources to animal welfare regulators to permit more effective surveillance and to support accredited quality assurance through independent auditing programs.
- Solidify Australia’s international leading role in animal welfare by harmonising animal welfare standards and guidelines across all states and territories.

We need the South Australian government promoting and enforcing a regulatory framework that maintains public confidence in livestock production. There is a need to communicate industry support for continuous improvement and science-based animal welfare regulation, combined with their significant investment to lift standards to ensure the continuation of livestock social licence.

Furthermore, we note the Government’s intention to introduce a new overarching statute to enable a modern approach to biosecurity management in South Australia. The proposed Bill will consolidate several existing Acts, including those covering livestock, the dog fence, management of stray stock, and relevant provisions of fisheries legislation. This will bring consistency to biosecurity management across industries. The drafting process is nearing completion, and PPSA understands that the Bill will be introduced in this session of Parliament in due course. We recognise the potential interrelation of this legislative framework with animal welfare matters and emphasize the need for biosecurity to remain a priority for livestock production in South Australia, including the effective management and control of feral animals, and appropriate control of wildlife.

The Scope of Animal Sentience

A major change in the Bill is the ability to recognise sentience in animals as outlined in section 4 (1) of the Act that “Animals are living things that can feel, perceive and experience both positive and negative states”. Industry is supportive of the recognition of animals’ ability to perceive negative and positive experiences as outlined in our previous submissions but does not support a defined meaning of sentience being included in the legislation. It is important to recognise that animals are distinguished from human beings on many levels, and to ensure that activities involving animals such as livestock farming can continue with the best of intentions.

Recognising animal sentience in animal welfare laws can have several potential risks and challenges for livestock production:

- 1. Legal Complexity:** Incorporating animal sentience into animal welfare laws introduces legal complexity and ambiguity. Defining and interpreting the concept of animal sentience within a legal framework may be challenging, leading to uncertainties regarding the scope and application of animal welfare standards. This can create compliance burdens for livestock producers, regulatory authorities, and enforcement agencies, as they navigate evolving legal requirements and judicial interpretations.
- 2. Compliance Costs:** Recognizing animal sentience may necessitate changes to livestock production practices and infrastructure to ensure compliance with higher welfare standards. Implementing measures to accommodate the physical and psychological needs of sentient

animals, such as providing enriched environments, social interaction, and access to outdoor spaces, can entail additional costs for farmers. These compliance costs may pose financial challenges for livestock producers, particularly small-scale operations with limited resources.

- 3. Competitive Disadvantage:** Livestock producers operating in jurisdictions with stringent animal welfare laws may face competitive disadvantages relative to producers in regions with less stringent regulations. Higher welfare standards can increase production costs, leading to higher prices for animal products such as meat, dairy, and eggs. This may erode the competitiveness of domestic livestock producers in domestic import allowed markets and global markets, where consumers prioritize price and convenience over animal welfare considerations.
- 4. Supply Chain Complexity:** Recognizing animal sentience may require greater transparency and traceability within the livestock supply chain to ensure compliance with welfare standards. Producers may need to demonstrate adherence to welfare requirements through documentation, auditing, and certification processes. This can increase administrative burdens and supply chain complexity, particularly for vertically integrated operations or producers participating in export markets with strict welfare certification requirements.
- 5. Trade Implications:** Differences in animal welfare standards and regulations between trading partners can create trade barriers and market access restrictions for livestock producers. Exporting countries may impose import requirements related to animal welfare, such as certification schemes or animal welfare assurances, which must be met by exporting producers. Failure to comply with these requirements can result in trade disruptions, tariffs, or bans on animal products, affecting the export competitiveness of livestock producers.
- 6. Innovation Constraints:** Stringent animal welfare regulations may deter investment in research and innovation aimed at improving livestock production practices and technologies. Fears of regulatory scrutiny, liability, or public backlash may discourage experimentation with new methods or technologies that have the potential to enhance animal welfare while maintaining productivity and efficiency. This could impede the adoption of innovative solutions to address welfare challenges and improve animal well-being in livestock production systems.

Avoiding duplication

Australian Animal Welfare Standards and Guidelines are based on science and evidence, that consider practicalities and costs to industry. They are also underpinned by stakeholder engagement.

Australian farmers strive to be recognised as global leaders in livestock management by using science-based best practice methods of husbandry based on agreed national minimum welfare standards. This is driven by market access and consumer demand, and activities that take place to demonstrate and enforce standards through quality assurance programs, rather than by regulation

alone. We need government to recognise and support these endeavours and avoid duplication.

Animal welfare is a central feature of livestock-based frameworks to meet the increasingly complex sustainability imperatives coming from corporate, consumer, and government entities, which have a broader human centric focus. Across the agricultural sector, a variety of commodity-specific sustainability frameworks, certifications, and other schemes exist to substantiate sustainability efforts and progress.

PPSA supports the proposition that the Australian dairy and livestock sector has demonstrated its commitment to improving animal welfare through ongoing support for the Australian Animal Welfare Standards and Guidelines and industry-led sustainability frameworks:

- **Australian Dairy Sustainability Framework:** The sector commits to ensuring the health, welfare, and best care for all animals throughout their lives. The industry is dedicated to continuously improving practices and transparently reporting on progress and areas needing improvement.
- **Australian Beef Sustainability Framework (ABSF):** This framework includes 'Best Animal Care' as a goal, guided by the five domains of animal welfare.
- **Sheep Sustainability Framework (SSF):** This framework exemplifies the livestock industry's commitment to ongoing improvements in animal welfare. Theme one, 'Caring for Our Sheep,' focuses on reducing, refining, and replacing painful husbandry practices, implementing best practice sheep management, and ensuring humane processing and on-farm euthanasia.

We further note that at a state level, the South Australian red meat, dairy, and wool industries have made animal welfare an essential part of both the SA Dairy Industry Action Plan and the SA Beef and Sheep Industry Blueprints. These place a key focus on animal health and welfare and have recently been reviewed to include even more ambitious targets to continually improve the welfare of South Australian livestock.

Emerging technologies to improve animal welfare outcomes

Livestock and dairy commodity groups are strong advocates for the future application of virtual fencing technology in commercial farming systems and seek regulatory approval for use beyond the research sector in South Australia. Virtual fencing has been shown through peer reviewed research, to be effective at managing livestock movements in a low stress, reduced handling way, with benefits to the environmental management and reduction in labour requirements.

Of particular concern to our industry sectors is how 'virtual fencing' is handled under Regulations.

Governance and Decision Making

It is proposed that the Department of Environment and Water (DEW) has carriage of the legislation and a range of committees established by the Minister to make relevant determinations to oversee the legislation. We believe a strong and direct relationship to the Minister responsible for the Department of Primary Industries and Regions SA (PIRSA) will be an essential tenement of the proposed framework in making decisions which may impact livestock production.

To improve animal husbandry and to develop best practice for production animals, the government also needs to work in partnership with industry. Challenges in enforcing animal welfare are at present the monitoring of animal husbandry, the accreditation of quality assurance and the funding of independent auditing programs.

We implore the Minister to address the functional conflicts of interest outlined in this submission regarding inspection activities and proposed enforcement. We seek further and detailed consultation on this key policy matter before the new legislation is presented to Parliament, as outlined below.

Managing conflicts in performing statutory duties

PPSA notes the dual role of the Royal Society For The Prevention of Cruelty to Animals (South Australia) Limited (RSPCA(SA)), as both an advocacy body and statutory inspector empowered to prosecute animal welfare and neglect under the current Animal Welfare Act. Its constitutional objects³ include:

1. Educating the South Australian community regarding the humane treatment and management of animals, and increasing public awareness of and support for animal welfare;
2. **Enforcing the existing laws** to prevent cruelty to animals;
3. **Influencing the amendment or development of legislation and standards** considered necessary for the protection and welfare of animals; and
4. Providing animal rescue and welfare services.

RSPCA funding model

We note RSPCA(SA) is affiliated with the national charity, the Royal Society For The Prevention of Cruelty to Animals Australia (RSPCA), a company registered with the Australian Charities and Not-for-profits Commission (ACNC) and listed by name as a Deductible Gift Recipient (DGR).

National fundraising money may be directed to RSPCA(SA) to support its charitable operations, including inspectorates.⁴ More than 70% of RSPCA(SA) revenue was raised through community support in FY23 according to its most recent Annual Report.

³ Section 3.2, RSPCA (SA) Limited Constitution

⁴ SA fundraising number: CCP2449

\ PPSA submits there is an inherent conflict in the RSPCA(SA)'s fundraising activities directed toward campaigns that seek to change the legal framework governing production animals, while at the same time seeking public and community funds for animal welfare inspection services. To demonstrate impact, there may be a strong incentive to target animal husbandry practices or industries subject to public animal activist campaigns (such as banning live sheep exports).

There are also significant public monies directed to the RSPCA(SA) as a registered charity.

We note the RSPCA(SA) was awarded \$16.4 million over four years in additional support as part of the 2024-25 South Australian budget to provide compliance activities, welfare assessments and assist in the enforcement of animal welfare provisions. This indicates inspection activities targeting both domestic animals and commercial livestock in South Australia is likely to increase over the forward estimates, irrespective of the proposed legislative reforms.

Lobbying activities

RSPCA(SA) has established a dedicated Animal Welfare & Advocacy team, which works with other like-minded organisations, "...to strengthen our influence at State and Federal level for improved animal welfare laws, policies and outcomes", noting that key advocacy achievements for FY2023 included:

- Supporting "...the national campaign urging the Federal Government to legislate a date to end live sheep export", including a national petition to lobby the Federal Government.
- "Lobbied for better standards of welfare for farm and livestock animals..."⁵

PPSA highlights that the open and public nature of these campaigns has the potential to impact the livelihood of livestock producers complying with existing Australian laws and animal welfare standards and damage public trust in farming and cause unnecessary damage to the industry's reputation. This has particularly been the case in connection to the export of live sheep by sea.

PPSA contends the tone and emotive nature of such public campaigns has compromised the level of trust held by producers in the RSPCA, in being able to regulate animal welfare of commercial livestock with impartiality. This is a significant concern when coupled with the proposal to shift Ministerial powers to prohibit activities by way of regulation, without a requirement of legislative amendment.

To be clear, PPSA does not question the legitimate interests of advocacy groups such as RSPCA(SA) to lobby for policy and legislative changes concerning matters of interest to their membership that relate to animal cruelty. We note the organisation has published a proforma submission to the Animal Welfare Act public consultation, calling for a range of matters to be incorporated in public survey responses based on RSPCA policy positions, to give weighting to its recommendations.⁶

PPSA contends the problem arises in in its dual status as a regulator in advocating for matters in

⁵ https://www.rspcasa.org.au/wp-content/uploads/2023/10/RSPCA_Annual-Report-2022-23_on-line.pdf

⁶ <https://www.rspcasa.org.au/the-issues/animal-welfare-act-review/>

\ public campaigns over existing laws that may erode public trust in the livestock sector.

Pre-determined policy advice to AWAC

We note the RSCPC(SA) has published a list of prohibited activities it would like to add to the Act's prohibitions under proforma survey question 15, including:

- Transporting, racing, or using animals for entertainment when animals are at risk of heat stress.

This open campaign indicates the RSCPA(SA) has a specific interest in changing South Australian laws which govern livestock transportation, which may extend to undermine industry codes and guidelines in place, and which codify best practice animal welfare by regulation. As a relevant case study in relation to livestock transport protocols in South Australia:

- PPSA notes the public comments made by the RSPCA(SA) chief inspector in respect to heavy vehicle livestock carriers, whereby separate and isolated incidents of truck rollovers were cited in RSPCA(SA) media activity earlier this year⁷.
- We further note the response⁸ of Livestock SA in calling for "...a collaborative effort to discuss the issue with government and the Livestock and Rural Transporters' Association".
- This matter also highlights the importance of the RSPCA(SA) engaging the relevant stakeholders through proper process as a regulator, rather than media commentary as lobbyists seeking policy change.

Maintaining the confidence of industry in the RSPCA(SA) is particularly troublesome given the proposed changes to the Animal Welfare Advisory Committee (AWAC) in the new Act, whereby the weighting of livestock production skills and experience is significantly diminished, in considering the cost and practicality of such measures.

Authorised Officers

PPSA holds significant concern about enshrining the RSPCA as a named entity within the Act, and its statutory powers as inspectors under the Authorised Officer provisions proposed.

PPSA submits that in modernising South Australia's animal welfare regime, there must be a clear functional separation within the RSPCA, to prevent public campaigning against laws it is charged with a duty to enforce. It is essential to maintain confidence in the regulatory scheme and the impartiality of inspectors acting as Authorised Officers.

PPSA contends the apparent conflict places individual RSPCA inspectors in an untenable position when dealing with livestock producers. It is no longer acceptable to merely rely upon internal employee codes of conduct to manage conflicts of individual inspectors.

⁷ <https://www.rspcasa.org.au/rspca-sa-alarmed-at-livestock-truck-accidents/>

⁸ <https://www.abc.net.au/news/2024-02-13/rspca-alarmed-by-livestock-deaths-after-multiple-truck-rollovers/103460370>

Potential misuse of data

There is increasing concern that by the RSPCA undertaking inspection activities relating to individual cases, aggregated data could then be used to lobby for a range of interventions in the animal welfare regulatory framework in South Australia, irrespective of codes of practice or industry standards already in place, as advocacy efforts are also enhanced through the collection of such data. For example, we note the Government's announcement to legislate to ban jumps racing in 2022, relied upon Victorian data gathered by the RSPCA⁹ and its strident opposition to this form of racing.

There is limited public information to suggest any formal ring-fencing of data or information collected during inspectorate activities, or internal controls to limit interference of lobbying priorities, in directing the program of RSPCA(SA) enforcement. This should be an area of urgent review; particularly given the increasingly activist policy platform the RSPCA appears to be adopting.

Best practice regulation

PPSA strongly supports Livestock SA's observation that:

"The RSPCA has a very clear and very public conflict of interest when it comes to the livestock industry. It consistently lobbies against many aspects of commercial livestock production. It took a leading role over many years in the recent animal rights movement to permanently ban live sheep exports. It has many other publicly stated positions against livestock production practices and encourages others to adopt these positions."

Under the principles of administrative law, we believe these dual and potentially competing functions held by the RSPCA give rise to a real conflict of interest, whereby conflict between the public duty of RSPCA inspectors and prevailing interests of their employer, may improperly influence enforcement activities. The development of a new Animal Welfare Act is an important opportunity to review the appropriateness of these arrangements under best practice regulation guidelines.

These ongoing regulatory matters concerning the RSPCA and impacting commercial livestock production have also been canvassed and appropriately dealt with in other jurisdictions.

Summary

Balancing the interests of animals, livestock producers, consumers, and society requires careful consideration of the potential impacts and implementation strategies to ensure that welfare improvements are achievable, economically viable, and socially acceptable within the livestock industry.

While not to dismiss the need for a general 'duty of care' as contemplated by the draft Bill, the potential for heavy burdens on economic activities (esp. primary production), could be

⁹ <https://www.premier.sa.gov.au/media-releases/news-items/government-to-support-end-to-jumps-racing-in-south-australia>

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counterproductive without proper consultation and recognition of positive efforts.

We need to contextualise the approach of livestock production industries, separate to companion animals. This is a key communication challenge in approaching South Australia's reform agenda.

While the policy intent to ensure transparency of the legislative framework is reasonable, the proposal for the government to maintain a public register of decisions and mandatory reporting as a minimum requirement raises concern about the additional regulatory burden this may create for owners, including primary producers. This could be a costly and complex process if poorly designed.

PPSA urges DEW to address the functional conflicts of interests which have been outlined in this submission concerning RSPCA inspection activities. We seek further and detailed consultation in this key policy matter before the new legislation is presented to Parliament.

RESPONSES TO DISCUSSION PAPER COMMENTS

1. Preliminary – principles and objects

Do we think the definition of ‘animal’ is appropriate?

PPSA **supports** the broader definition of ‘animal’ as proposed to include fish, noting the proposed exemptions for activities undertaken in accordance with the *Aquaculture Act 2001* and the *Fisheries Management Act 2007*.

Do we think the principles and objects are appropriate?

PPSA **agrees with Livestock SA’s conditional support** for the proposed purpose of the Act, such that we:

- Provisionally support Object b) *“to take a proactive approach to preventing harm, and the ill treatment of animals”* but being so subjective and there must be a recognition of the differences in commercial livestock production in the ability to prevent harm.
- Support Object c) *“to improve community awareness and responsibilities of animal ownership”*, particularly in relation to *“increasing awareness in the community of livestock production and the significant work undertaken by the SA red meat and wool industry to continually improve animal welfare (PPSA would add the Dairy industry in here too)”*.
- Emphatically support Object d) *“to ensure the Minister receives appropriate advice in relation to animal welfare matters”*, particularly when it comes to production animals and the need to consult with industry and their associated coded standards of practice.

2. Animal welfare offences

Do we think the duty of care provision is appropriate?

PPSA **conditionally supports** the introduction of a duty of care provision in the Bill, but with several important factors to be addressed in the Bill. These include:

- clarity around the definition of *“appropriate and adequate food, water and living conditions”* to differentiate commercial livestock, compared to companion animals or livestock kept as domestic pets.

For this, PPSA supports the proposition for having people with the required knowledge of livestock production systems enforcing this legislation in relation to livestock properties.

Recommendation 1:

Regulations prescribed under the new Act must continue to be based on the Australian Animal Welfare Standards for production animals, as these standards are scientifically grounded and regularly reviewed to ensure they remain fit for purpose.

Do we think the penalties for ill treatment offences are appropriate?

PPSA believes that industry **generally supports** penalties for those ‘doing the wrong thing’ as it reflects on the industry and importantly is counter to good animal husbandry and productivity. As observed elsewhere in this submission, it is the definition of ‘ill treatment’ that must be clearly defined and regulated by informed Authorised Officers, that the Bill needs to specifically address.

As submitted by Livestock SA, PPSA agrees that:

“We support an increase in penalties for breaches, as persons found guilty of an animal welfare offence cannot be tolerated, but this reinforces the critical need for compliance officers to fully understand livestock production.”

Do we think the ability to prohibit items or activities in the future is appropriate?

PPSA **conditionally supports** the ability to prohibit items or activities under the new Act, subject to an important caveat previously outlined in this submission: there must be appropriate constraints on this Ministerial power through legislative oversight by Parliament, rather than merely relying on regulation as a disallowable instrument. This is particularly crucial given the proposed changes to the membership of the Animal Welfare Advisory Committee (AWAC) and the highly charged political nature of animal welfare issues, which often lead to activism.

PPSA notes that such direct intervention could have significant implications for commercial livestock production, including increased costs, productivity losses, reputational damage, and loss of market access. Without regard for practical considerations, these powers could result in substantial unintended consequences. These impacts could affect both livelihoods and the ongoing viability of farm businesses, without providing compensation or the ability to diversify markets or production systems in the future.

Therefore, PPSA believes that such prohibitions should only be enacted by Parliament and not by Ministerial decision alone. This approach must ensure appropriate industry consultation to mitigate harm to the affected industry sector, considering the lack of compensation or practical adjustments arising from changes in practices that are currently legal under existing law.

Recommendation 2:

The prohibition of items or activities under the new Act should be enacted through legislation by Parliament, rather than by regulation or legislative instrument alone.

3. Advisory committees

Do we think the skills-based composition of AWAC is appropriate?

PPSA **does not support** the proposed replacement clause concerning the Animal Welfare Advisory Committee (AWAC) as drafted. We believe AWAC must ensure representation of primary producers that manage commercial livestock, dairy, and intensive animal farming systems in its deliberations.

PPSA **opposes** the removal of its statutory role in the current Act, in providing nominations to the Minister for appointment to AWAC for two positions relevant to livestock production. Together with the position nominated by the Minister responsible for the administration of the Livestock Act, these positions explicitly recognise the skills set relevant for decision making at AWAC concerning production animals, in both cost and practicality. It is important to also have alignment with national industry standards and guidelines.

To be clear, we are not opposed to a skills-based board. It may be that there are practical challenges when retaining the current inclusive, community-representative nomination process whilst also, concurrently, requiring certain skills to be present on AWAC at all possible times. Yet, the legislation could always be constructed to require that the Minister *give regard* to a set of skills when selecting the AWAC, or alternatively, simply require a shorter list of crucial skills that must always be present on the AWAC.

The current Act ensures that at least three members of the current eight member AWAC have links to the livestock sector, whereby the weighting of proposed changes to AWAC for livestock production skills and experience is significantly diminished. We are deeply concerned by the proposed change for two key reasons:

- the risk of politicisation of AWAC through direct political appointments by the Government of the day, which would be contrary to the public interest; and
- the importance of allowing key livestock industry and government (PIRSA) interests that are most affected by the Act, to have a voice and be heard *within* AWAC, allowing for a balanced and inclusive view of how AWAC should discharge its statutory responsibilities.

We contend that AWAC governance being determined through an alternative model will not be in the best interest of the various and substantial communities which we represent, nor in the best interests of all South Australians – nor, we would argue, in the genuine interests of the State Government (nor Opposition) of the day.

The current arrangements also provide for proper direct democratic accountability of the Minister, as it is the Minister that makes the final selection from up to three nominees (for each position) provided by PPSA as the organisation currently listed in the Act. Furthermore, we note the Minister already has the power to directly appoint the majority of AWAC, which can be utilised to address any perceived gaps in skills or expertise in AWAC.

Furthermore, we note the only peak body named in the proposed Act relates to the RSPCA. We

believe this is problematic given the clear and apparent conflict of interest with the organisation functioning as both a lobby group and statutory inspector. It must be made clear in legislation in which capacity the RSPCA is appointed, noting a range of actors may be appointed as Authorised Officers under proposed inspection arrangements.

Recommendation 3:

The composition of the Animal Welfare Advisory Committee (AWAC) retains at least two positions for individuals with significant experience in livestock management and production, as nominated by the industry peak body, Primary Producers SA.

4. Licences, permits and registered activities.

Do we think the separation of licences is appropriate?

PPSA is **generally supportive** of licensing breeders separately to researchers as being appropriate.

However, this needs further clarity about the application of the provision where the Research activity involves breeding animals as part of the research project itself.

PPSA encourages DEW to also clarify the transition arrangements for renewal of existing licences and the proposed 12-month term for new licences.

Do we think it is appropriate to have a nominated person for a licence?

PPSA **understands the need** for a licence to have an individual nominated for the purpose of accountability, however we note the individual should clearly understand legal obligations arising from being named in such regulatory instruments. PPSA suggests that by naming an entity as licence holder, this may bring responsibility back to the principals of that entity.

Do we think the ability to create permits is appropriate?

PPSA is **unclear** about the scope of this provision. Apart from the example in the discussion paper, it is unclear how the reliance upon permits will translate to undertaking commercial or research activities concerning livestock. Further consultation with the livestock sector may be required.

Do we think it is appropriate to have registered activities / entities?

While this may be appropriate, particularly for non-Public-sector entities/private businesses conducting research, PPSA suggests this requirement may need to provide for commercial-in-confidence provisions as to what information may then be released to a public domain.

Do we agree that animal ethics committees should be registered and require a nominated person?

PPSA understands the transparency measure would align with the intent behind the Code of Practice that current research and teaching users of animals must abide by.

PPSA suggests there would need to be some protection for the Nominated Person, if as an example, the Animal Ethics Committee (AEC) of a University or Public Sector body is asked to act as the AEC

\ for a small business undertaking research (such as an animal husbandry or agricultural vet company).

PPSA suggests this may be much harder for the Nominated Person to have sufficient oversight of a third-party entity with the liability of prosecution if some malpractice is determined, when such mechanisms are usually agreed with best intention provisions, and furthermore, will be reliant on audit provisions and site visits, often constrained by commercial-in-confidence provisions.

5. Enforcement

Do we think that the updated powers for authorised officers are appropriate?

PPSA has a range of **concerns** in connection to the proposed Authorised Officer provisions.

PPSA supports Livestock SA’s submission for the provision of increased powers for Authorised Officers provided they are appropriately trained to understand these powers and how their application applies in the context of livestock production. Regulation of livestock industries must be performed by suitable provider(s) with corresponding appropriate levels of government funding to ensure independent, thorough, timely and transparent regulation.

As outlined earlier in this submission, PPSA does hold significant concern about enshrining the RSPCA as a named entity within the Act, and its statutory powers as inspectors under the Authorised Officer provisions proposed, without also establishing safeguards to manage the potential conflict of interest between its lobbying activities and regulatory functions, both undertaken by paid company employees or volunteers.

PPSA strongly supports Livestock SA’s observation that:

“The RSPCA has a very clear and very public conflict of interest when it comes to the livestock industry. It consistently lobbies against many aspects of commercial livestock production. It took a leading role over many years in the recent animal rights movement to permanently ban live sheep exports. It has many other publicly stated positions against livestock production practices and encourages others to adopt these positions.”

Recommendation 4:

PPSA calls upon DEW to incorporate binding safeguards within the new Act to manage the potential conflict of interest held by third-party Authorised Officers when undertaking statutory functions. This is particularly important in cases where animal welfare inspection services are conducted by paid employees or volunteers of non-government entities.

Do we think separating the provisions for animals and items is appropriate?

PPSA **supports** Livestock SA in seeking amendments to section 59 – Power to provide food to neglected animals:

- While supporting the provision to provide food and water to an animal in need, the evidence that must be provided to the Authorised Officer of the need for food and water provision must be defined.
- Action based on a verbal complaint alone is not acceptable and the Bill should stipulate that visual evidence of the animal's condition is required

Do we think the definition of reasonable notice for routine inspections is appropriate?

PPPA **supports** a provision to be included for production animals, to recognise reasonable attempts to contact the owner of the animal in the 24-hours preceding any action.

We reflect the concern of livestock producers in relation to biosecurity risks arising from entry without prior notice or cooperation of the landowner. This is also relevant to animal husbandry considerations, such as the timing of lambing, which may have unintended consequences without proper knowledge of livestock production. It can also place an unnecessary risk to human health with the risk of injury to a person entering a paddock with animals they don't know.

Do we think the ability to issue notices (animal welfare notice and notice to comply) is appropriate?

Do we think the ability to seek an interim order is appropriate?

As stated, PPSA supports Livestock SA's submission for the provision of increased powers for Authorised Officers provided they are appropriately trained to understand these powers and how their application applies in the context of livestock production.

PPPA conditionally **supports** regulatory powers to be included for issuing notices to comply, as well as interim orders, be included in the new Act. Livestock producers must have a clear understanding of their legal duties in undertaking production activities and animal husbandry.

We believe such regulatory powers must be reviewable under the principles of Administrative Law and support the proposed rights of review outlined in Part 6 of the draft Bill.

Do we think the inclusion of enforceable undertakings is appropriate?

PPSA **supports** the proposed addition to the Act granting the Minister the power to issue enforceable undertakings. We note the significant penalties for non-compliance.

Do we think the ability to deal with seized animals is appropriate?

PPSA has a range of **concerns** in connection to the proposed seizure of animals and seeks further consultation in its practical implementation, when drafting such regulations.

6. Reviews

Do we think the system of reviews of decisions is appropriate?

PPPA **supports** the proposed rights of review outlined in Part 6 of the draft Bill. We believe such regulatory powers afforded to Authorised Officers must be reviewable under the principles of Administrative Law and natural justice.

7. Animal Welfare Fund

Do we agree with the introduction of an animal welfare fund?

PSPA notes fostering industry acceptance of enhanced welfare standards may require education, outreach, and incentives to promote voluntary compliance and adoption of best practices. There is a significant funding shortfall for animal welfare education, and we support the use of the funds for this purpose.

PPSA **supports** the inclusion of an Animal Welfare Fund under Part 7, whereby:

- the funds are spent in accordance with the functions outlined under section 52 (4) and are consistent with the principals and objects of the Act, and
- a committee with suitable representatives from across animal species, including the livestock industry, is developed to develop recommendations on expenditure.

8. Miscellaneous

Do we think it is appropriate to register interstate orders and enforce them in SA?

PPSA **supports** the addition to the Act of the ability to register interstate orders made in other states and territories to be recognised and registered in SA.

Animal welfare breaches should not be bound by state lines. Registration of these breaches is a positive inclusion and should prevent the ability to reoffend here in SA.

Do we think it is appropriate for the Minister to be able to grant exemptions?

This will be particularly important as industry standards, guidelines, or market access requirements evolve concerning livestock production, or as new technology becomes available.

PPSA also notes the interrelationship with the proposed new Biosecurity Act, which must take immediate priority in the event of an incursion or other control measure that may require an exemption from strict legal duties under the proposed replacement Animal Welfare regime.

We acknowledge that the Discussion Paper has already identified a legislative exemption for the commercial fisheries sector for activities undertaken in accordance with the *Aquaculture Act 2001* and the *Fisheries Management Act 2007*. This policy position recognises the need for industry activities to operate under specific statutory arrangements provided by other legislation.

Do we think it is appropriate to amend the Sentencing Act 2017 so that the Animal Welfare Act orders could be available for offences involving animals?

PPPA **seeks further consultation** in connection to the proposed sentencing laws and the role of the Courts. While we support the policy principle of maintaining a strong legislative deterrent for the prevention of cruelty to animals, we note the proposed expansion of the scope of the Act, together with stronger powers of enforcement by way of Authorised Officers, adds to the complexity in administering and potentially complying with the Act.

We note the proposed penalties are likely to be jurisdictionally leading, but this must be balanced with the need to support the livestock sectors having a clear understanding of their legal duties in undertaking production activities and animal husbandry.

ENDS.