



## **SUBMISSION ON THE ANIMAL WELFARE ACT DISCUSSION PAPER**

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## ABOUT VOICELESS

As an innovator, capacity builder and ideas-generator, Voiceless plays a leading role in the development of a cutting edge social justice movement, animal protection.

With a highly professional and well-educated team, Voiceless brings together like-minded compassionate Australians from the legal, academic, non-profit and education sectors to form strong and effective networks.

Voiceless believes in the provision of quality information, analysis and resources to inspire debate and discussion and to empower individuals and organisations to generate positive social change.

Voiceless is a non-profit Australian organisation established in May 2004 by father and daughter team Brian and Ondine Sherman.

To build and fortify the animal protection movement, Voiceless:

- gives grants to key projects which create the groundswell for social change;
- cultivates the animal law community through the provision of leadership, educational opportunities and resources; and
- raises awareness of animal protection issues within the education system in order to strengthen democratic skills, promote critical thinking and encourage advocacy amongst students.

### PATRONS

**J.M. COETZEE**, Nobel Prize for Literature Winner 2003, author of 'Lives of Animals' and 'Elizabeth Costello'

**BRIAN SHERMAN AM**, businessman and philanthropist

**DR JANE GOODALL**, world-renowned primatologist and animal advocate

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**HUGO WEAVING**, Actor: Oranges and Sunshine, Last Ride, Little Fish, Lord of the Rings Trilogy, Matrix Trilogy, The Adventures of Priscilla Queen of the Desert,

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## Introduction

The Northern Territory Department of Primary Industries, Water and Environment (the Department) are undertaking a review of the *Animal Welfare Act 2013* ('the Act') and the *Animal Welfare Regulation* ('the Regulation') (together, the Animal Welfare Legislation). As part of that review, a discussion paper has been released for public comment ('the Discussion Paper'). Voiceless's comments and recommendations on the discussion paper are set out below.

For the purposes of this submission, Voiceless has confined its comments to those aspects of the Animal Welfare Legislation that relate to the intensive farming ('factory farming') of animals; however, the fact that we have not commented on certain aspects of the discussion paper should not be read as implying that we endorse those sections of the Act.

### 1 Do we need a new Animal Welfare Act? If so, why?

- 1.1 Voiceless does not consider it necessary for the Northern Territory government to develop a 'new' Act. In saying that, Voiceless submits that the Animal Welfare Legislation needs to be amended to better protect the welfare of all animals in the manner outlined in this submission.
- 1.2 While Voiceless recognises that the Animal Welfare Legislation contains a number of provisions aimed at preventing animal cruelty, we are of the view that all animals have an equal right to be protected from suffering under the law. Consequently, Voiceless can never commend in its entirety a piece of legislation such as the Animal Welfare Legislation, which:
  - (a) by definition, does not protect all living creatures;<sup>i</sup>
  - (b) sanctions the differential treatment of certain species over others;<sup>ii</sup> and
  - (c) condones substantial suffering in certain contexts.<sup>iii</sup>
- 1.3 Voiceless welcomes the Northern Territory government's review of the entirety of the Animal Welfare Legislation. We consider the review to be a valuable opportunity to address the issues raised above. The review is also a timely exercise in that it recognises the increasing importance of animal protection to the Australian community. For example:
  - (a) The ACT government passed the *Animal Welfare (Factory Farming) Amendment Bill*, effectively banning the use of some of farming's cruelest practices from occurring in the ACT – namely, the use of battery cages,<sup>iv</sup> sow stalls, farrowing crates<sup>v</sup> and debeaking.<sup>vi</sup> Tasmania introduced similar legislation in 2013, banning new battery farms from commencing operation (it does not affect the three existing battery farm operators in Tasmania)<sup>vii</sup> and introducing a partial ban on sow stalls to be phased in over the next three years.
  - (b) Consumers are becoming more aware of the physical and psychological suffering endured by animals in the production of meat, dairy and egg products in Australia.<sup>viii</sup> Increasing numbers of consumers are willing to pay a little more for humanely produced products at the checkout,<sup>ix</sup> or are cutting out animal-derived food products altogether.<sup>x</sup> For further studies conducted on the changing nature of consumer demand and consumer expectations, refer to Schedule 1 of this submission.

- (c) Demand for animal law courses, which involve critical analysis of the adequacy of current animal welfare statutes, is increasing exponentially in Australian universities and in those overseas.<sup>xi</sup>
  - (d) Coles announced that it would cease to sell Coles brand caged eggs by 2013 and to phase out the use of sow stall pork, bacon and ham in their Coles brand products.<sup>xii</sup>
  - (e) Woolworths announced that it will phase out caged eggs from sale and the use of caged eggs in the ingredients of their own brand products by December 2018. Woolworths also announced that its fresh pork range is partially sow stall free.<sup>xiii</sup>
  - (f) The Australian pork industry has committed to voluntarily phasing out sow stalls by 2017. Specifically, the industry is aiming to ensure that sows are kept in loose housing from five days after mating, until one week before they are ready to give birth. This period would typically take around 105 days.<sup>xiv</sup>
  - (g) A number of voluntary standards and third party certification or accreditation schemes have emerged, enabling producers to differentiate their products on animal welfare grounds.<sup>xv</sup>
  - (h) The Australian Consumer and Competition Commission (ACCC) is cracking down on misleading and deceptive animal welfare claims (or 'credence claims') made by producers seeking to wrongfully capitalise on this consumer demand.<sup>xvi</sup> The Federal Court has found in favour of the ACCC and handed down substantial penalties on Australian chicken meat, egg and duck meat producers for misleading and deceptive conduct in their marketing and product labelling.<sup>xvii</sup>
  - (i) A rapidly growing number of Australian corporations are recognising the importance of animal welfare and incorporating these considerations in their corporate social responsibility strategies.<sup>xviii</sup>
- 1.4 The above reflects an appreciation from producers, retailers, the ACCC and the Australian Federal Court that animal welfare is a growing concern for the Australian community, and that consumers are willing to pay more for cruelty-free produce. Accordingly, Voiceless recommends that reform to the Animal Welfare Legislation is required to address this growing concern.
- 1.5 Reform is also needed to bring the Northern Territory in line with international jurisdictions that are leading the way in animal welfare law reform. The European Union (EU) banned the use of gestation crates for pigs and the use of battery cages for layer hens in 2013, and introduced additional stringent regulations on the slaughter and transport of animals. Further, the United Kingdom banned the use of veal crates in veal production over a decade ago, while Sweden, Germany, Finland and Austria have all independently outlawed battery cages.<sup>xix</sup>

## **2 What should the principle objectives of the Act be?**

- 2.1 Voiceless recommends that the following additional Objects be inserted into section 3:
- (a) Recognise and protect the welfare of animals, which includes but is not limited to, the following 'five freedoms' of animal welfare:
    - (i) appropriate food and water;

- (ii) appropriate living conditions;
  - (iii) prevention and mitigation of harm;
  - (iv) expression of natural behaviour; and
  - (v) appropriate handling;<sup>xx</sup>
- (b) The recognition of animals as sentient beings;<sup>xxi</sup>
  - (c) The recognition and respect of the dignity of animals;<sup>xxii</sup> and
  - (d) The enforcement of a duty of care on the carers of animals.<sup>xxiii</sup>

### **3 What definition of “animal” should be used in the Act?**

- 3.1 As mentioned in the Discussion Paper, the current definition excludes fish and crustaceans, thereby denying them the same level of protection as other animals.
- 3.2 Voiceless submits that the reference to fish being ‘in captivity or dependent on a person for food’ should be removed. At present, four states and one territory<sup>xxiv</sup> have eliminated any qualification to the inclusion of fish in prescribed animals.
- 3.3 Voiceless further submits that the qualification of crustaceans as being ‘in or on premises where food is prepared for retail sale, or offered for retail sale, for human consumption’ should be removed in the interests of non-discrimination between species and in line with the legislative provisions of Queensland<sup>xxv</sup> and Victoria.<sup>xxvi</sup>
- 3.4 The efficacy of the Animal Welfare Legislation is dependent on a definition of ‘animal’ that recognises the need to protect the welfare of all non-human sentient beings. Accordingly, Voiceless recommends the insertion of a definition of ‘animal’ which encompasses all such beings.

#### 4 Would it be better to abolish the Animal Welfare Authority so that it is clear and transparent that the Chief Executive is responsible to the Minister for the operation of the Act?

- 4.1 The Discussion Paper proposes the abolishment of the Animal Welfare Authority so that it is clear and transparent that the Department Chief Executive is responsible to the Minister for the operation of the Act. Voiceless strongly opposes this position.
- 4.2 Voiceless advocates for a truly independent animal welfare body which is sufficiently resourced to administer animal welfare legislation, ensure compliance with the Act and Regulations, and prosecute offences. Importantly, an independent body is essential to ensuring animal welfare considerations are given appropriate weight in the development of animal welfare policy and law reform.
- 4.3 As noted in the Discussion Paper, a number of states and territories have handed over responsibility for the development of animal welfare policy and the monitoring and enforcement of animal welfare legislation to their respective state or territory department of primary industries (DPI). The effectiveness of DPI in protecting animal welfare has come under intense scrutiny from animal advocates. This scrutiny has focused largely on the conflicting objectives of these offices, which are charged with the tasks of, on the one hand, protecting animal welfare, and on the other, fostering the growth of primary industries.<sup>xxvii</sup>
- 4.4 The objectives of the Department demonstrate this point, stating:

*"The Primary Industries Division delivers strategic services that support profitable and sustainable primary production.*

*It works in partnership with producers, industry bodies, community groups and related agencies to promote industry growth and ensure access to markets for animals, plants, and animal and plant products.*

*The main services are:*

- inspection, treatment and certification services for animals and animal products;*
- inspection, treatment and certification for plants and plant products;*
- research and extension programs to help producers sustainably lift crop and stock yields and capacity;*
- development of best-practice farming methods and new crop for specific environments;*
- Indigenous pastoral and horticultural development;*
- biosecurity and laboratory services for plant and animal health; and*
- monitoring of, and response to, emergency and endemic animal and plant pests and diseases.<sup>xxviii</sup>*

- 4.5 Animal welfare does not even feature in this summary of the Department's Objects. Even if these Objects were amended to make clear that the Department's functions include the protection of animal welfare, Voiceless submits that the growth and profitability of primary industries would continue to be pursued at the expense of, and to the complete exclusion of, the protection of animal welfare.
- 4.6 Commentators have also suggested that DPIs are vulnerable to "regulatory capture". Regulatory capture occurs when a regulatory agency acts in the interests of the industry it is regulating (i.e. agribusiness) in a way that is inconsistent with the public interest the regulation is designed to serve (i.e. animal welfare). This capture may have a direct impact on the ability of these offices to effectively implement, monitor, enforce and prosecute welfare standards.<sup>xxix</sup>
- 4.7 For the reasons outlined above, Voiceless strongly disagrees with the suggestion posited in the Discussion Paper that the Northern Territory government, via its relevant Minister and Department Chief Executive, could be administratively responsible for the Act, similar to the arrangements in all of the states and territories.
- 4.8 Accordingly, Voiceless submits that instead of removing the Animal Welfare Authority, it should be made an independent body enshrined in statute so that it is appointed independently of the public service and therefore not answerable to the Minister or the Chief Executive.

## **5 Should there be just one category of authorised officer with powers appropriately specified upon appointment?**

- 5.1 The Discussion Paper proposes establishing one category of authorised officer, which would have the power to investigate and monitor compliance with the Animal Welfare Legislation, including in relation to scientific research. Voiceless does not understand the rationale behind this proposal, and accordingly, does not see any practical benefit in removing one of the categories.
- 5.2 Voiceless supports any proposal that would see animal welfare officers given greater powers to monitor and enforce the Animal Welfare Legislation. Similarly, Voiceless supports any proposal that would result in a greater number of animal welfare officers being employed.
- 5.3 The Discussion Paper notes that, excluding police officers, there are currently 28 authorised persons in the Northern Territory, comprising 25 animal welfare inspectors and 3 animal welfare officers. This is clearly inadequate given the size of the Northern Territory and the number of animals that reside within the jurisdiction. This number is particularly inadequate, given the monitoring and enforcement of agriculture facilities are likely given second priority over investigations of welfare complaints concerns regarding domestic pets.

## **6 Are the powers mentioned above sufficient?**

- 6.1 Voiceless advocates the strengthening of monitoring and enforcement powers of authorised provisions. Accordingly, Voiceless endorses the following powers as proposed by the Department:
- (a) power to enter premises and vehicles;
  - (b) power to require reasonable help;
  - (c) power to require person in control of vehicle to take action;

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- (d) power to give animal welfare directions;
- (e) power to require name and address;
- (f) power to require further information;
- (g) power to require production of documents;
- (h) monitoring programs relating to scientific teaching and research of animals; and
- (i) general power of investigation.

6.2 Voiceless recommends authorised officers are given the following additional powers:

- (a) Authorised persons are given the powers in relation to 'commercial premises' that are consistent with section 24G of the *Prevention of Cruelty to Animals Act 1979* (NSW).
- (b) Authorised persons are given the power to give directions of suspension of use or referral to an animal ethics committee, as in section 49 of the *Animal Welfare Act 2002* (WA).

6.3 Voiceless recommends the following amendments to current provisions of the Act:

- (a) Section 62(3) – The notice requirements should be amended from 7 days to 1 day. The current notice provisions are inappropriate, as it provides occupiers a lengthy period of time to cover up any contravention with the Animal Welfare Legislation. Section 68(2) must be amended accordingly.
- (b) Section 62(4)(c) – The provision should be amended to permit authorised persons to enter premises if the authorised person believes on reasonable grounds that:
  - (i) an offence under the Animal Welfare Legislation is being committed, was committed, or will likely be committed at the premises;
  - (ii) there is in or on premises, an animal or thing connected with an offence; or
  - (iii) there is in or on premises an animal referred to in section 67.

This is relatively consistent with the powers of entry in other state and territory jurisdictions.<sup>xxx</sup>

- (c) Section 63(2) and (3) – The provisions should be amended so that verbal consent from an occupier will suffice for an authorised person to enter into a premises.
- (d) Section 66(e) – The power should be amended to enable authorised persons to seize an animal if the authorised officer believes it is **likely** the animal will be connected with an offence.
- (e) Section 67(4)(a) – The power should be amended so that the power to kill an animal can only be authorised if it is deemed necessary by a veterinarian and veterinary treatment is not an option.

- (f) Section 68B(2) – The provision should be amended to make clear Authorities who seize an animal are to ensure that the animal is properly treated and cared for (including the provision of veterinary care where appropriate) until it is returned to the owner, rehomed or humanely disposed of.<sup>xxx1</sup>
- (g) Section 68F(1)(e) – The provision should be amended to make clear that, before an animal is ‘humanely euthanased’, the Authority must have held the animal for at least one year and during this period must have used all means possible, and in good faith, to find an alternative suitable home and custodian for the animal.

## **7 Who should appoint authorised officers?**

- 7.1 Presently, authorised persons in the Northern Territory are appointed by the Animal Welfare Authority.
- 7.2 Voiceless supports the power of the Animal Welfare Authority to make the appointment. See Voiceless’s previous recommendation that the Animal Welfare Authority should be made an independent statutory body.

## **8 Should the Committee be a non-statutory body similar to NSW, Victoria and WA?**

- 8.1 Voiceless believes the Committee is essential to ensuring the protection of animal welfare in the Northern Territory. It provides advice to the Minister, organisations and the general community on a variety of matters relevant to animal protection. It is also charged with the task of participating in the development of Codes of Practice and the review of adopted Codes of Practice.
- 8.2 The Department has asked whether the Committee should be a non-statutory body similar to NSW, VIC and WA. Presently, the Committee is protected under Part 7 of the Act and Regulation 6 of the Regulations. This is consistent with South Australia, Tasmania and ACT, which also protect their respective animal welfare committees through statute.
- 8.3 Making the Committee a non-statutory body would make its function and membership wholly contingent on the discretion of the Minister. For the reasons outlined above in section 4 relation to the need for animal welfare bodies to be independent from DPI and the need to avoid the potential for regulatory capture, Voiceless recommends that keeping the Committee an independent statutory body is essential to maintaining its legitimacy and credibility as an animal welfare body.
- 8.4 Moreover, it is important to note that a non-statutory body may be abolished at the discretion of the Minister, as its existence is not protected or governed by statute. A clear example of this was the Federal Government’s abolition of the federal Australian Animal Welfare Advisory Committee (AAWAC) in November 2013. This was made possible in part because the AAWAC was not protected by statute.<sup>xxxii</sup>
- 8.5 On a related issue, Voiceless commends the Act in requiring representatives of the Committee to be drawn from a variety of different stakeholders. In saying that, Voiceless submits that the Committee should also have representation from animal protection groups that are independent from government. These groups could include, for example, Voiceless or Animal Australia. Voiceless also recommends that independent scientists with expertise in animal welfare should be heavily represented on the Committee.

## 9 Should the actions that amount to cruelty or aggravated cruelty be expanded in more detail? If so, what should be included?

- 9.1 Firstly, the mental element required to constitute a basic cruelty offence should be removed. The lack of an 'intention to cause harm' should not preclude acts of cruelty from being a basic offence under the Act. Otherwise, countless acts of cruelty would be in effect legalised. Further, considering the heftier maximum penalties, intention to cause harm is more appropriately considered for an act of aggravated cruelty. Ultimately, cruelty offences should be a strict liability offence, rendering subjective considerations of 'intent' irrelevant. Accordingly, Voiceless submits that section 9(2)(b) should be deleted.
- 9.2 Secondly, the intention requirement under aggravated cruelty is set at an overly high threshold. Rather than requiring an intention 'to kill or seriously harm the animal', it should simply be established that the person intended to cause harm. Further, in accordance with animal cruelty offences in South Australia<sup>xxxiii</sup> and the Australian Capital Territory,<sup>xxxiv</sup> section 10(1)(c) should also be amended to include recklessness:
- "The person intends to cause any degree of harm or death to the animal, or is reckless about causing such harm or death."*
- 9.3 Thirdly, the use of subjective words such as 'reasonable' and 'unnecessary' is inappropriate for determining cruelty offences. Although 'reasonable action' is defined in section 4 of the Act as 'obtaining veterinary treatment and destroying the animal in a manner that causes it to die quickly and without unnecessary suffering', the ambiguity surrounding the term 'unnecessary' renders the definition vulnerable to lenient subjectivity (a pattern of which is evident in past animal cruelty sentencing). The term 'unnecessary' requires definition, especially considering that the animal industry entails what is deemed "unavoidable" suffering. Such subjectivity can easily give weight to a defence against cruelty proceedings.
- 9.4 In response to the call for suggestions as to expansion of the offences, Voiceless emphasises the importance of creating an inclusive rather than exclusive list. That is, the new definition should not be limited to the specific acts listed.
- 9.5 Voiceless also recommends these further amendments to the Act:
- (a) Delete the phrase "*having regard to all relevant circumstances, including the animal's species and the environment in which it is kept or lives*" from section 7(2). Such a qualification allows discrimination on basis of species, which is inconsistent with the Objects of the Act.
  - (b) Delete the words "*to take reasonable steps*" from section 8(3), because there is already sufficient 'subjectivity' in the standards set under the definition of 'minimum level of care'.
- 9.6 Voiceless recommends that the Northern Territory must review their penalty regime for the offences of cruelty or aggravated cruelty. The current maximum penalties in the Northern Territory are, for a basic cruelty offence, 150 penalty units and/or 18 months' imprisonment, and for an aggravated cruelty offence, 200 penalty units and/or 2 years' imprisonment.
- 9.7 To acknowledge the serious nature of animal cruelty, however, the Northern Territory must bring these penalties into line with the higher maximum penalties available in other jurisdictions. Employing a combination of the highest penalties, the recommended maximum penalties for the Northern Territory are:

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- (a) for a basic cruelty offence: 600 penalty units for a corporation, 246 penalty units for an individual<sup>xxxv</sup> and/or 2 years imprisonment;<sup>xxxvi</sup> and
  - (b) for an aggravated cruelty offence: 1,200 penalty units for a corporation, 492 penalty units for an individual<sup>xxxvii</sup> and/or 5 years imprisonment.<sup>xxxviii</sup>
- 9.8 Voiceless submits that section 76A of the Act should be amended so that, without limiting the power of the court under section 76A or any other provision of the Act, the court must order that an individual is prohibited from ever owning an animal again if that individual was found guilty of aggravated cruelty under the Act.
- 9.9 Section 71 of the Act provides for a limitation period of 2 years from the date the offence occurred is inappropriately short. By comparison, Tasmania allows for a limitation period of 5 years from the date the offence was committed for aggravated cruelty offences, and a period of 2 years for other offences.<sup>xxxix</sup> Victoria also allows a wider scope for prosecution with a 3 year limitation period.<sup>xl</sup> Accordingly, Voiceless respectfully submits that section 71 be amended to reflect that proceedings for an offence of aggravated cruelty may be commenced within 5 years after the date the offence is alleged to have been committed, and that proceedings for any other offence under this Act may be commenced within 3 years after the date the offence is alleged to have been committed.

## 10 Should any offences be added to those that exist in the Act?

- 10.1 Voiceless supports the inclusion of the general offences listed in the Discussion Paper.<sup>xli</sup> However, we also make the general observation that the list of offences appears unsatisfactory in that it fails to comprehensively protect farm animals.
- 10.2 Further to the current offences, Voiceless suggests the list should explicitly include:
- (a) The use of all forms of cage egg production systems, including battery cages and enriched cages;
  - (b) The use of all forms of intensive pork production systems, including sow stalls and farrowing crates;
  - (c) The use of intensive farming systems for dairy or beef cattle (including, without limitation, veal crates);
  - (d) The use of artificial lighting systems in commercial poultry production;
  - (e) The practice of forced moulting;
  - (f) The permanent tethering of any animal;
  - (g) The use of live animals as feed or bait;
  - (h) Any act or omission which causes or is likely to cause an animal fear or humiliation;<sup>xlii</sup> and,
  - (i) The administration of all mutilation practices (including, but not limited to, desnooding, debeaking,<sup>xliii</sup> tail docking,<sup>xliiv</sup> removal of incisors and genitalia of pigs,<sup>xliiv</sup> dehorning and disbudding<sup>xliiv</sup>) unless completed with pain relief by a veterinarian for therapeutic purposes.

## 11 Should there be exceptions or exemptions in relation to the application of the Act and if so, what for?

- 11.1 It is vitally important that the Animal Welfare Legislation, and its Objects, apply to all individuals within society and to all animals. It is incongruous that an Act would, on the one hand, seek to protect the welfare of animals, but on the other, permit certain members of the community to commit cruelty against certain animals. Permitting cruelty in certain circumstances significantly undermines the efficacy, legitimacy and credibility of the Animal Welfare Legislation. Cruelty to any animal by any member of society is never acceptable, and as such, Voiceless opposes any form of exception, exemption or defence from operating under the Animal Welfare Legislation.
- 11.2 The discrepancy in the laws of the Act can be expressly seen by the exclusion of stock animals from certain animal cruelty offences namely, the inappropriate transportation of stock animals and the hunting, catching, confinement and killing of stock animals (section 21(1)(a); section 23A (3)).
- 11.3 The prevalence of subjective terms in the legislation also provides an easy avenue for defence against a cruelty prosecution, as previously discussed, and should be taken into account when considering options for exemptions.
- 11.4 In particular, Voiceless submits that the defences in section 79 of the Act should be deleted.
- 11.5 Firstly, Voiceless submits that compliance with the Codes of Practice should not constitute a defence under section 79(1)(a) of the Act for the following reasons:
- (a) In their current form, the Codes of Practice are unable to offer true protections to animals. The current drafting of the Codes permit the occurrence of some of the cruellest and most inhumane factory farming practices – including the use of battery cages, sow stalls, farrowing crates, and exorbitantly high stock densities for pigs and poultry. The Codes also permit horrific animal mutilation practices, such as dehorning, disbudding, debeaking and tail docking - all without pain relief and without the need for farmers to obtain veterinary assistance. These practices are known to cause both acute and chronic pain. This is legalised cruelty.
  - (b) By allowing the Codes to be used as a defence to an action under the Act, the cruel practices permitted under the Codes are sanctioned and institutionalised. This facilitates the widespread suffering of animals. Permitting the Codes of Practice to be used as defences to actions under the Act sends a clear message to the general community, those involved in animal husbandry and those enforcing the law that aspects of the Codes are acceptable despite the pain and suffering they cause to animals. This message is contrary to the spirit of an anti-cruelty Act.
  - (c) Although the Codes have varying degrees of enforceability across Australia's states and territories, they are uniformly used as a shield to protect persons and organisations who would otherwise be committing acts of cruelty under each jurisdiction's animal welfare legislations.
  - (d) In order for the Code to be effective in protecting the welfare of animals, the Codes need to be reformed. Voiceless welcomes the opportunity to work with the Northern Territory government, and with other states and territories, in reforming the Codes so they achieve more positive welfare outcomes for animals. Voiceless would also welcome the opportunity to comment on aspects of the Codes which it considers provide an adequate

level of protection and welfare for farm animals. These qualitative standards could then be incorporated into the Animal Welfare Legislation on a case by case basis.

- (e) The Objects of the Act is “to provide for the welfare of animals, to prevent cruelty to animals and to ensure that animals are treated humanely”. Voiceless suggests that the use of the Codes as a defence to action under the Act leads to results which are inconsistent with the Object and spirit of the Act. Additionally, the practices of intensive pig farming, broiler chicken farming and the caging of layer hens would probably contravene sections 8, 9 and 10 of the Act, yet no action could succeed where a person is able to retreat to the safe heaven provided by the defence granted under section 79(1)(a).
- (f) Accordingly, Voiceless does not believe that the Codes of Practice offer adequate protection for factory farmed animals and as such does not wish to see the continued use of these instruments as defences to acts that would otherwise be considered to be cruel.

11.6 Secondly, Voiceless submits that section 79(1)(b) should be deleted, as ‘reasonable in the circumstances’ is too subjective, is inconsistent with the Objects of the Act and inappropriate given the offences under the Act strict liability offences.

11.7 Thirdly, Voiceless believes that section 19 – Electrical Devices of the Act should be removed for the following reasons:

- (a) Section 19, in conjunction with the Regulations, has the effect of allowing the use of prescribed electrical devices in prescribed circumstances as outlined in Sch 1.
- (b) Voiceless submits that the use of electrical devices inflicts unnecessary and unjustifiable pain upon animals. Voiceless thereby submits that the Northern Territory should implement a total ban on electrical devices for the following reasons:
  - (i) Electrical prods, which according to Sch 1 will be permitted to be used for driving, herding, mustering or controlling cattle, buffalo, camels and pigs have been:
    - (A) shown to make “a very high percentage of animals ... extremely agitated”;<sup>xlvii</sup> and
    - (B) disallowed for use on pigs in the Model Code of Practice for the Welfare of Animals Pigs (3<sup>rd</sup> edition).<sup>xlviii</sup>
  - (ii) Electro-immobilisers, which according to Sch 1 are permitted to be used for cattle, buffalo and crocodiles in certain conditions, have been objected by international leaders in innovative animal welfare research and handling procedures. For example, Dr Temple Grandin has stated in relation to these devices:

“When electro-immobilisation is used a very small current is passed through the body that paralyses the muscles. It does not make the animal unconscious and insensible to pain. The animal is paralysed, but remains conscious. The animal may not be able to vocalise or struggle because the muscles are paralysed. The use of electricity to immobilise animals should be forbidden.”<sup>xlix</sup>

- (iii) In direct contrast to the laws in the Northern Territory, Voiceless notes that:
  - (A) electrical prods are prohibited for use on rodeo animals in South Australia in Regulation 8 of the *Prevention of Cruelty to Animals Regulations 2000* (SA);
  - (B) electrical pulses are banned in Tasmania, unless administered by a veterinary surgeon by Regulation 5 of the *Animal Welfare Regulation 1993* (TAS); and
  - (C) all electrical devices, other than electrical fences have been banned in Western Australia on the basis that such devices are defined in the Regulations as inhumane devices. The use of such a device constitutes an offence under Regulation 3 of the *Animal Welfare (General) Regulations 2003* (WA).
- (c) Accordingly, Voiceless submits that the Northern Territory government should follow the lead demonstrated by the jurisdictions referred to above by banning the use of all electrical devices. Voiceless believes that the use of these devices constitutes an act of cruelty which is likely to cause pain and suffering to an animal irrespective of whether the animal is classified as a 'companion animal' or 'stock animal'.

11.8 Additionally, the exclusion provided by section 23A(3) should be deleted.

## **12 Should the power of the Minister to exempt people, or a class of persons, from complying with the Act be retained?**

- 12.1 The Act currently allows the Minister responsible for administering the Act to exempt a person or class of persons from complying with any provision of, or the whole Act, as well as regulations made under the act.
- 12.2 As previously indicated, it is incongruous that an Act would, on the one hand, seek to protect the welfare of animals, but on the other, permit certain members of the community to commit cruelty. In addition, such a power, which can be exercised without parliamentary scrutiny, undermines the efficacy, legitimacy and credibility of the Animal Welfare Legislation. Accordingly, Voiceless submits that the Minister's power to exempt an individual from complying with any provision of the Act should be revoked.

## **13 Should the power of the Minister to prevent the Act applying to an animal or class of animals be retained?**

- 13.1 For the reasons outlined above in sections 1, 2 and 11 above, Voiceless submits that the Minister's power to exempt an animal or class of animals from any part of the Animal Welfare Legislation not be retained.

## **14 Should Codes be adopted by including reference to them in the Animal Welfare Regulations rather than by Gazette notice?**

- 14.1 Voiceless submits that the Northern Territory should follow other states and territories and adopt Codes by incorporating them in the Regulations, rather than by Gazette notice. This would make the Codes legally enforceable; would ensure the Codes are subjected to a degree of parliamentary scrutiny in their enactment,

amendment or revocation; and would maximise transparency, accountability and public input into animal welfare standards.

- 14.2 In saying that, Voiceless submits that in their current form, the Codes of Practice are unable to offer true protections to animals and need to be reformed. See our comments in section 11 above.

**15 Should codes that have been adopted have to be clearly identified and available on the Department website?**

- 15.1 Voiceless submits that for the purpose of transparency and accessibility, the adopted Codes must be clearly identified and made available on the Department website.

- 15.2 The Department should do all things possible to make the Codes and the Animal Welfare Legislation available and accessible to the public, including providing copies of them to farmers and other relevant industry participants. This should coincide with farmer and industry group community education, awareness and training campaigns / programs to promote higher welfare standards.

**16 Should non-compliance with an adopted code be an offence?**

- 16.1 Voiceless submits that non-compliance with an adopted Code should be treated as an offence and accordingly enforceable under the Animal Welfare Legislation.
- 16.2 In saying that, Voiceless notes its comments above in relation to the need to reform the Codes, as it presently permits industry to engage in cruel and inhumane farming practices on animals.<sup>1</sup>

## Schedule 1 - Changing consumer demand and community expectations

- 1.1 Over the last decade, Australian consumers have increasingly embraced the global ethical food movement.<sup>ii</sup> This coincides with the increasing importance of animal protection to the Australia community.
- 1.2 In a 2014 national survey of 1,041 adult Australians aged 18 and over commissioned by Voiceless:
  - 1.2.1 54.5% of respondents felt that the wellbeing of animals used for food production was 'very important' to them and 34.4% felt it was 'somewhat important';
  - 1.2.2 61% of respondents have bought 'free range' or 'humanely' derived animal products on animal welfare grounds; and
  - 1.2.3 74.9% of respondents support a law requiring that farm animals including pigs, cows, and chickens are provided with enough space to exhibit their natural behaviours.
- 1.3 In April 2012, consumer protection group CHOICE conducted a survey of 900 of their members about free range food and labelling.<sup>iii</sup> The survey found:
  - 1.3.1 60% of respondents felt it was 'essential' that the eggs they buy are free range, while a further 25% say it's 'important';
  - 1.3.2 85% of free range buyers noted animal welfare considerations among the reasons for their choice; and
  - 1.3.3 52% of respondents said they were willing to pay \$3-\$5 more per dozen for free range rather than caged eggs.
- 1.4 In 2011 Voiceless commissioned a national survey of 1,006 adult Australians over 18 years of age. The survey found: 80% of individuals believed battery cages should be banned; 82% of individuals felt that sow stalls should be banned, and 66.6% of respondents considered animal welfare to be an important factor when purchasing food at the supermarket.
- 1.5 In a 2006 national survey, participants identified factory farming practices and treatment of livestock as amongst the most prominent issues in Australian animal welfare.<sup>iiii</sup>

## Endnotes

<sup>i</sup> An animal is defined as 'a live member of a vertebrate species including an amphibian, bird, mammal (other than a human being) and reptile; a live fish in captivity or dependent on a person for food; or a live crustacean if it is in or on premises where food is prepared for retail sale, or offered for retail sale, for human consumption'. See *Animal Welfare Act*, section 4(1).

<sup>ii</sup> For example, section 79(1)(a) of the Act contains an exclusion for all practices undertaken in accordance with a prescribed code of practice relating to animal husbandry. Such codes generally apply to pigs, chickens, cows and other 'stock animals'.

<sup>iii</sup> For example, the Codes of Practice which are prescribed by section 79(1)(a) permit painful mutilations such as castration, tail docking and teeth clipping of pigs and debeaking/beak trimming of chickens without pain relief. See: *Model Code of Practice for the Welfare of Animals - Pigs (3<sup>rd</sup> edition)* (2008), cl 5.6, *Model Code of Practice for the Welfare of Animals - Domestic Poultry (4th edition)* (2002), cl 13.2

<sup>iv</sup> Section 9A, Animal Welfare Act 1992 (ACT).

<sup>v</sup> Section 9B, Animal Welfare Act 1992 (ACT).

<sup>vi</sup> Section 9C, Animal Welfare Act 1992 (ACT).

<sup>vii</sup> Except to cap the number of pens in production, "Tasmania to ban battery hen farming", ABC.net.au (19 May 2012), < <http://www.abc.net.au/news/2012-05-18/tasmania-to-ban-battery-hen-farming/4019200>>, accessed on 31 March 2014.

<sup>viii</sup> For example, a 2006 national survey found that participants identified factory farming practices and treatment of livestock as amongst the most prominent issues in Australian animal welfare: TNS Social Research Consultants (2006) *Attitudes Toward Animal Welfare*, Canberra, July, Section 3.2 <[http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0003/146748/tns\\_aw\\_research.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0003/146748/tns_aw_research.pdf)>, accessed on 21 October 2013.

<sup>ix</sup> For example, a 2009 Queensland survey found that 34% of participants would be willing to pay more for products derived from animals raised in accordance with higher animal welfare standards: Taylor, N and Signal, T (2009) 'Willingness to Pay: Australian Consumers and "On the Farm" Welfare', 12 JAAWS 345, p 351.

In a survey conducted by Choice in May 2012, 85% of participants stated that animal welfare was the main reason for purchasing free range products: Choice, 'Choice Survey on Consumer Expectations of Free Range Egg Labelling Key Findings Report – May 2012', <<http://www.choice.com.au/~media/Files/SUBMISSIONS%20AND%20REPORTS/Free%20range%20key%20findings%20report.ashx>>, accessed on 21 October 2013.

<sup>x</sup> Unfortunately there is little information available about the number of vegetarians or vegans in Australia. According to Roy Morgan Research data, as of December 2006, 1,538,000 people in Australia aged 14 and over agree that "the food I eat is all, or almost all, vegetarian". That equates to 9.1% of the population aged 14 and over: Vegetarian Victoria, 'Statistics on Vegetarianism', <<http://www.vegetarianvictoria.org.au/going-vegetarian/statistics-on-vegetarianism.html>>, accessed on 22 October 2013.

A similar study in 2005 found that 30% of adults in Australia 'usually or sometimes' maintain a vegetarian diet: Health Focus International, *HealthFocus International Trend Study: Australia*, (2005).

<sup>xi</sup> Voiceless, 'Where to Study Animal Law' [16 October 2007], < [http://www.voiceless.org.au/Law/Law\\_Students/Where\\_to\\_study\\_Animal\\_Law.html](http://www.voiceless.org.au/Law/Law_Students/Where_to_study_Animal_Law.html)>

<sup>xii</sup> Coles Limited, 'Coles blog', 'Better Animal Welfare at Coles!' < <http://blog.coles.com.au/2013/01/09/better-animal-welfare-at-coles/>>, accessed on 31 March 2014.

<sup>xiii</sup> All Woolworths fresh pork meat is sourced from farms that only use stalls for less than 10% of the sows' gestation period: Woolworths Limited, 'Animal Welfare', <[http://www.woolworthslimited.com.au/page/A\\_Trusted\\_Company/Responsible\\_Sourcing/Animal\\_Welfare/](http://www.woolworthslimited.com.au/page/A_Trusted_Company/Responsible_Sourcing/Animal_Welfare/)>, accessed on 27 March 2014.

<sup>xiv</sup> Australian Pork Limited, 'Housing' < <http://australianpork.com.au/industry-focus/animal-welfare/housing/>>, accessed on 27 March 2014.

<sup>xv</sup> Such schemes include Humane Choice, RSPCA Approved Farming and Demeter Bio-dynamic.

<sup>xvi</sup> "ACCC cracks down on egg producers", News.com.au (10 December 2013), <<http://www.news.com.au/finance/business/accc-cracks-down-on-egg-producers/story-e6frfkur-1226779888264>>, accessed on 28 March 2014.

<sup>xvii</sup> See, for example, *Australian Competition and Consumer Commission v Turi Foods Pty Ltd* (No 4) [2013] FCA 665 where Baiada Poultry Pty Ltd, Bartter Enterprises Pty Ltd and the Australian Chicken and Meat Federation Inc were found to have misled and deceived the public by labelling Baiada and Bartter's chickens as 'free to roam' when the stocking densities of meat chickens in such facilities did not allow for chickens to roam freely; *Australian Competition and Consumer Commission v Pepe's Ducks Ltd* [2013] FCA 570 where Pepe's was found to have misled and deceived the public by claiming that their ducks were "open range" and "grown nature's way" when in fact they were intensively raised; *Australian Competition and Consumer Commission v Luv-a-Duck Pty Ltd* [2013] FCA 1136 where the statements that ducks were "range reared and grain fed" in the "spacious Victorian Wimmera Wheatlands" was found to be false, and *Australian Competition and Consumer Commission v C.I. & Co Pty Ltd* [2010] FCA 1511 where the labels "Free Range" and "Fresh Range-Omega 3" for eggs from battery caged hens was found to be misleading and deceptive.

<sup>xviii</sup> See, for example, Nestlé Limited, 'Nestlé Commitment on Farm Animal Welfare' <[http://www.nestle.com/asset-library/documents/creating%20shared%20value/rural\\_development/nestle-commitment-farm-animal-welfare.pdf](http://www.nestle.com/asset-library/documents/creating%20shared%20value/rural_development/nestle-commitment-farm-animal-welfare.pdf)>, accessed on 31 March 2014.

<sup>xix</sup> Gaverick Matheny and Cheryl Leahy, 'Farm-Animal Welfare, Legislation, and Trade (2007) 70 *Law and Contemporary Problems*, 325; <<http://jgmatheny.org/matheny%20leahy%202007.pdf>>.

<sup>xx</sup> UK Farm Animal Welfare Council, 'Five Freedoms' <http://www.fawc.org.uk/freedoms.htm>, accessed on 7 April 2014.

<sup>xxi</sup> This is consistent with the Federal Government's approach in the Australian Animal Welfare Strategy and National Implementation Plan 2010-14, which is intended as a blueprint for the development of animal welfare policies nationally, and states: "the strategy has relevance for the entire community. It covers all sentient animals—that is, those with a capacity to experience suffering and pleasure. Sentience is the reason that welfare matters." Department of Agriculture, Fisheries and Forestry, 'The Australian Animal Welfare Strategy and National Implementation Plan 2010-14', p 6 <[http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/aaws\\_implementation\\_plan\\_updated.pdf](http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/aaws_implementation_plan_updated.pdf)>, accessed on 4 April 2014.

This is also consistent with the Treaty of Lisbon, Article 13 which states: "In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage."

To learn more about animal sentience, visit the Voiceless Sentience Issues Page: <<https://www.voiceless.org.au/the-issues/animal-sentience>>.

<sup>xxii</sup> The Swiss Constitution has also been amended to protect the "dignity of the creature" in the use of animal reproductive and genetic material (Article 120, Bundesverfassung (Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101), English version here: <[http://www.servat.unibe.ch/icl/sz00000\\_.html](http://www.servat.unibe.ch/icl/sz00000_.html)>, as at 7 August 2013).

<sup>xxiii</sup> RSPCA Australia, *Position Paper H1 Animal Welfare Legislation* <<http://kb.rspca.org.au/afile/503/88/>> (2013), p 5.

<sup>xxiv</sup> *Prevention of Cruelty to Animals Act 1979* (NSW), section 4(1); *Animal Care and Protection Act 2001* (Qld), section 11(1)(a); *Animal Welfare Act 1992*, Dictionary; *Prevention of Cruelty to Animals Act 1986* (Vic), section 3(3); *Animal Welfare Act 1993* (Tas), section 3.

<sup>xxv</sup> *Animal Care and Protection Act 2001* (Qld), section 11(1)(d).

<sup>xxvi</sup> *Prevention of Cruelty to Animals Act 1986* (Vic), section 3(3)(b).

<sup>xxvii</sup> Deborah Cao, 'Animal Law in Australia and New Zealand', Thomson Reuters (2010), 7.470.

<sup>xxviii</sup> Northern Territory Department of Primary Industry and Fisheries, [http://www.nt.gov.au/d/Primary\\_Industry/](http://www.nt.gov.au/d/Primary_Industry/), accessed on 7 April 2014.

<sup>xxix</sup> Jed Goodfellow, *Captured by Design – The Story Of Farm Animal Welfare Regulation in Australia*, Presentation at the Future of Animal Law, October 2012.

<sup>xxx</sup> Section 24E, *Prevention of Cruelty to Animals Act 1979* (NSW); section 81, *Animal Welfare Act 1992* (ACT); section 122, *Animal Care and Protection Act 2001* (QLD); section 38, *Animal Welfare Act 2002* (WA); section 16, *Animal Welfare Act 1993* (TAS); section 30, *Animal Welfare Act 1985* (SA); section 23, *Prevention of Cruelty to Animals Act 1986* (VIC).

<sup>xxxi</sup> This is consistent with section 42, *Animal Welfare Act 2002* (WA).

<sup>xxxii</sup> Voiceless, 'Animal law in the spotlight: Govt pulls out of AAWS' (18 December 2013) <<https://www.voiceless.org.au/content/animal-law-spotlight-govt-pulls-out-aaws>>, accessed on 27 March 2014.

<sup>xxxiii</sup> Section 13(1), *Animal Welfare Act 1985* (SA).

<sup>xxxiv</sup> Section 7A, *Animal Welfare Act 1992* (ACT).

<sup>xxxv</sup> Section 9 Prevention of Cruelty to Animals Act 1986 (VIC).

<sup>xxxvi</sup> Section 13(2) *Animal Welfare Act 1985* (SA).

<sup>xxxvii</sup> Section 10, *Prevention of Cruelty to Animals Act 1986* (VIC).

<sup>xxxviii</sup> Section 19, *Animal Welfare Act 2002* (WA).

<sup>xxxix</sup> Section 48C *Animal Welfare Act 1993* (TAS).

<sup>xl</sup> Section 41AC, *Prevention of Cruelty to Animals Act 1986* (VIC).

<sup>xli</sup> See p 13.

<sup>xlii</sup> As per section 8 *Prevention of Cruelty to Animals Act 1986* (VIC).

<sup>xliii</sup> Model Code of Practice for the Welfare of Animals- Domestic Poultry, (4th Edition) (2002) ('the Poultry Code'), Appendix 6.2.

<sup>xliiv</sup> *Ibid*, section 5.6.

<sup>xliv</sup> Model Code of Practice for the Welfare of Animals - Pigs (3<sup>rd</sup> edition) (2008) ('the Pig Code'), section 5.6.

<sup>xlvi</sup> Model Code of Practice for the Welfare of Animals- Cattle, (2<sup>nd</sup> edition) (2002) ('the Cattle Code'), section 5.8.

<sup>xlvii</sup> Temple Grandin, 'The relationship between reaction to sudden, intermittent movements and sounds and temperament', (2000) *Journal of Animal Sciences*, 1471.

<sup>xlviii</sup> *Model Code of Practice for the Welfare of Animals – Pigs (3<sup>rd</sup> edition)* (2008), para 5.5.

<sup>xlix</sup> Temple Grandin, *Electro-immobilization is NOT a humane method of restraint*, Dr Temple Grandin's Web Page, <<http://www.grandin.com/humane/electro.html>> at 04 March 2014.

<sup>l</sup> See our comments at section 14 above.

<sup>li</sup> "Ethical food movement continues to grow", ABC.net.au <<http://www.abc.net.au/site-archive/rural/news/content/201304/s3728627.htm>>, accessed on 31 March 2014.

<sup>lii</sup> Rachel Clemons, 'Free Range Eggs', CHOICE (30 May 2012) < <http://www.choice.com.au/reviews-and-tests/food-and-health/food-and-drink/organic-and-free-range/free-range-eggs-2012.aspx>>, accessed 26 March 2014.

<sup>liii</sup> TNS Social Research Consultants, *Attitudes Toward Animal Welfare*, July 2006, 3.2.