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Productivity Commission
Level 12, 530 Collins Street
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Via online lodgement

18 August 2016

**Submission to the Productivity Commission
inquiry into the Regulation of Agriculture – responding to the
Commission's draft report, dated 21 July 2016**

Thank you for the opportunity to provide input to the above inquiry.

Who we are

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

LFA's objectives include:

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

REG NO A0047100G
ABN 74 557 651 569

LFA also works in partnership with Fitzroy Legal Service in Melbourne to run the Animal Law Clinic: a free legal advice service with the primary objective of improving animal welfare. The Animal Law Clinic has been operating since April 2013.

Principles guiding LFA's approach to the Productivity Commission inquiry into the Regulation of Agriculture

LFA supports the normative rule (adopted worldwide) that in all situations involving animals under human control, humans are obligated to uphold 'The Five Freedoms'.¹ The Five Freedoms – or basic rights – of animals are:

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

LFA is committed to alleviating animal suffering and this objective cannot be met unless we work within the confines of the dominant paradigm to propose and/or support initiatives that will, on balance, improve animal welfare in both the short and long term. We are an incrementalist organisation. While we maintain a long term goal to minimise animal suffering by helping to shift the dominant paradigm; we are equally committed to working within the existing paradigm to achieve practical outcomes for animals. This includes encouraging world's best practice in relation to animal husbandry and care in all types of animal production. It is this principled yet pragmatic approach that guides LFA in our response to the Productivity Commission's inquiry into the Regulation of Agriculture.

Through our work, LFA has recognised a significant correlation between world's best practice and optimal productivity in relation to animal farming; transport; sale; slaughter; and the processing and sale of animal-derived products.³ However, we will focus this brief submission on draft recommendations 5.1 and 5.2 of the Commission.

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

2 This version of The Five Freedoms is taken from OIE, Terrestrial Animal Health Code, Ch.7.1 Introduction to the Recommendations for Animal Welfare, viewed 7/8/15: http://web.oie.int/eng/normes/mcode/en_chapitre_1.7.1.htm

3 For example: long term economic and productivity gains from processing meat onshore for chilled export to replace live export and generate more reliable markets, which has not gone unnoticed by Australian meatworkers, see:

<http://newcastle.amieu.asn.au/barnaby-joyce-live-export-standbroke/>

Another example concerns the standard practice of separating new-born dairy calves from their mothers within a few hours of birth, which the Netherlands has recently begun to reconsider - see:

<https://www.partyfortheanimals.nl/breakthrough-lower-house-wants-calf-with-mother-cow/>

and which the scientific community are also revisiting, see: [http://www.appliedanimalbehaviour.com/article/S0168-1591\(15\)00315-9/fulltext](http://www.appliedanimalbehaviour.com/article/S0168-1591(15)00315-9/fulltext)

Response to Draft Recommendation 5.1 and associated Information Request 5.1 regarding the establishment of an independent body to develop national standards and guidelines for farm animal welfare

LFA applauds the Commission's recommendation that an independent body – which, for convenience, we will refer to as the Independent Office of Animal Welfare (“**IOAW**”) – be established in Australia to develop national standards and guidelines for farm animal welfare. LFA supports the reasons outlined by the Commission for the creation of an IOAW at the federal level, and also – for reasons discussed in reference to Recommendation 5.2 (below) – at State and Territory levels.

Were the IOAW established as a statutory body, the States may be more inclined to their refer powers to develop standards and guidelines for farm animal welfare to the Commonwealth under Section 51 (xxxvii) of the Australian Constitution. This formal referral would reduce or eliminate the current inefficiencies generated by lack of uniform farm animal welfare laws across Australia. It would appear that the unwillingness of some States and Territories to be bound by the model codes, standards and guidelines generated at the federal level arose (in large part) from the industry-dominated Australian Animal Welfare Strategy prescribing unacceptably low standards of welfare.⁴ However, LFA's support for States and Territories to co-operatively enact identical legislation, much less to formally refer powers, is contingent on the establishment of a genuine and strong federal IOAW, to undertake the task of generating standards and guidelines without industry bias and reflecting community expectations.

The Commission has sought feedback on the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare, and how it ought to be funded. To ensure the independence of the proposed IOAW and to avoid the conflict of interest inherent in the Department of Agriculture ostensibly representing both the welfare of animals and the interests of the industry that profits from them; LFA recommends that the federal IOAW be located within the Attorney-General's Department. We also recommend that the IOAW be fully funded from the general revenue of the Commonwealth, noting that this would require a redirection of funds from the (defunct) Australian Animal Welfare Strategy and all other agencies whose functions the IOAW would replace. To further ensure the independence of the IOAW, LFA would prefer – at least in the short term – that its CEO be appointed by the former members of the federal Australian Animal Welfare Advisory Committee (de-funded in 2014), rather than by the Attorney-General, the Minister for Justice, or their delegates.

The Commission has sought feedback on what the IOAW's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom).

⁴ By way of example: in Tasmania, standard 4.1.5 of the *Model Code of Practice for the Welfare of Animals - Pigs, Third edition* (C'th) concerning the confinement of sows in stalls was excluded from the *Animal Welfare (Pigs) Regulations 2013* (Tas) and replaced with standards to significantly reduce the use of sow stalls. Tasmania also introduced laws to phase out cage egg production under the *Animal Welfare (Domestic Poultry) Regulations 2013* (Tas). This law has since been amended but Tasmanian laws still differ from the *Model Code of Practice for the Welfare of Animals - Domestic Poultry, 4th edition*, in that they ban new cage egg production. In the Australian Capital Territory (“ACT”) the *Animal Welfare (Factory Farming) Amendment Bill 2013* banned the use of battery cages in egg production and the use of sow stalls and gestational crates for pigs. In Western Australia, despite being endorsed by the former Commonwealth Standing Council on Primary Industries in May 2009, the *Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock* (revised in 2012) are yet to be implemented.

LFA recommends that the IOAW take responsibility for developing uniform national standards and guidelines for farm animal welfare, also for the welfare of companion animals; wild animals (both native and non-native); animals used for sport and entertainment; and animals used for other purposes (including experimentation). LFA acknowledges that the current inquiry relates only to the regulation of agriculture. LFA will hereafter focus its recommendations accordingly, while noting the potential efficiency gains in centralising the administration of all animal welfare and developing a repository of knowledge that crosses the artificial divide between farm and non-farm animals. LFA would prefer that the Commonwealth receive a referral of powers from the States to enable it to undertake these functions efficiently. This will need to be negotiated and formalised with the States. A baseline precedent for this referral and co-operation was generated by the Australian Animal Welfare Strategy, and it is hoped that this may be improved by the introduction of an IOAW to aid and progress negotiations.

LFA submits that a federal IOAW should be given responsibility for generating a Commonwealth Animal Welfare Policy and then assessing compliance with it, over time. To date, LFA is unaware of the existence of any overarching or comprehensive 'Australian Animal Welfare Policy', with the exception of brief statements recorded on the Australian Animal Welfare Strategy website and in a document which appears to mistakenly conflate 'National Animal Welfare Policy' with a policy plan to generate 'Australian Animal Welfare Standards and Guidelines'.⁵ In order to achieve the sophisticated level of governance Australians want and expect, it will be necessary to establish a policy against which the achievements of successive Governments can be measured - perhaps on an annual basis (as with some human rights assessments) – and by which each Government may communicate its unique approach and intentions to its constituents. Given the interest that Australians express in animal issues of all kinds, the guidance offered by a Commonwealth Animal Welfare Policy seems to be well overdue.

LFA further recommends that the IOAW be tasked with providing an independent voice on all Australian animal welfare to the whole of Government. This would include undertaking targeted reviews and generating publicly accessible reports containing relevant recommendations to Government. A federal IOAW should provide rational and considered counsel to Government, helping to overcome the apparent inertia of industry-dominated institutions such as the Live Export Standards Advisory Group ('LESAG')⁶ and the Australian Animal Welfare Strategy, the latter of which the IOAW would replace. LFA proposes that all recommendations made by the IOAW be made to the Commonwealth Government, through the Attorney-General's Department, and that these recommendations be made publicly accessible within a reasonable period of publication (for example: six months).

Drawing directly from the *Voice for Animals (Independent Office of Animal Welfare) Bill 2015* (C'th), LFA further recommends that a federal IOAW be tasked with undertaking

5 See 'Australia's animal welfare capacity and arrangements' (30 November 2012), a paper prepared by the former Animal Welfare Committee's Working Group on Australia's Animal Welfare Arrangements and Capacity [available here:

<http://www.australiananimalwelfare.com.au/app/webroot/files/upload/files/Att%20B%20Australia%27s%20animal%20welfare%20arrangements%20and%20capacity%20report%283%29.pdf>]

6 The 'Independent Review of Australia's Livestock Export Trade' commissioned on 31 June 2011 – better known as the Farmer Review – reported that animal industry were so confident of their own position on LESAG that they questioned the benefit of including any welfare groups within the industry-dominated Advisory Group. [See: http://www.daff.gov.au/Style%20Library/Images/DAFF/_data/assets/pdffile/0010/2378197/independent-review-australias-livestock-export-trade.pdf]

inquiries, commissioning research and preparing reports on each of the following:

- i. protecting and promoting animal welfare in the export of live animals⁷;
- ii. the effectiveness of Commonwealth laws that apply to the export of live animals;
- iii. sustainability and animal welfare issues that arise in respect of killing kangaroos for commercial purposes⁸; and
- iv. considering academic and scientific research relevant to any of the issues above.

The Commission has also sought guidance on what processes the IOAW should use to inform and gauge community values on farm animal welfare. In this regard, LFA recommends the re-establishment of the federal Australian Animal Welfare Advisory Committee, under the direct management and oversight of the IOAW, to which it would report. Beyond this, LFA recommends broad consultation with all interested parties, with maximum transparency in communications. This will ensure that the IOAW is neither perceived nor in actuality biased toward industry or welfare groups, but is committed to implementing international best practice in Australia in relation to animal farming; transport; sale; slaughter; and the processing of animal-derived products.

Response to Draft Recommendation 5.2 regarding the review of State and Territory monitoring and enforcement functions for farm animal welfare

LFA commends the Commission on its draft recommendation 5.2 that State and territory governments review their monitoring and enforcement functions for farm animal welfare and make necessary changes so that:

- there is separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions
- a transparent process is in place for publicly reporting on monitoring and enforcement activities
- adequate resourcing is available to support an effective discharge of monitoring and enforcement activities.

LFA further recommends that the Commission consider making recommendations to all States and Territories to the effect that:

- All animal welfare monitoring functions can be more efficiently and productively undertaken by IOAWs, located with the various Departments of Justice of each State and Territory; rather than continuing to be divided between the various Departments of Primary Industry/Agriculture; the Departments of Environment (for wild animals); the municipal councils; the RSPCAs; and the local police forces. The inherent overlap of functions and the repeated examples of confusion over responsibility and powers (at a practical level, despite various memoranda of

7 We note that New Zealand ended its live export trade in 2003 following public outrage over the death of 4,000 sheep on a single shipment to Saudi Arabia. During the space of six years - from 2009 to 2014 - 6,340 cows and 127,775 sheep are officially reported to have died during live export voyages from Australia. The Australian community is duly outraged, yet successive governments fail to act, even to implement a long-term phase out of live export to compete with chilled exports from other nations - see: <http://www.abc.net.au/news/2016-07-19/indian-buffalo-meat-en-route-to-jakarta-indonesia/7587174>

8 We note with particular concern the inhumane practices inherent in the killing of wild kangaroos and joeys (both pouch young and joeys at foot) affecting Australia's international reputation (eg. in Japan); and the risks to human health and international meat markets through the sale of unsafe meat (for instance, see: <http://www.abc.net.au/news/2014-08-18/kangaroo-meat-ban/5677656>)

understanding between agencies) results in gross inefficiencies; chronic underfunding of the RSPCA enforcement agency⁹; and increasing failures to meet community expectations by protecting animals in a meaningful way.

- All animal welfare enforcement functions will be more efficiently and productively undertaken by dedicated animal investigation units within the local police forces of each State and Territory, which should, in turn, be overseen by the relevant State/Territory IOAW within the Department of Justice.
- The RSPCAs are charitable organisations ill-equipped to undertake law enforcement activities, and should no longer be tasked with these responsibilities. The State of New York offers an exemplary model of a recent (co-operative and efficient) transfer of enforcement responsibility from an SPCA to an animal investigation unit within a local police force, resulting in significantly improved enforcement of animal welfare.

In support of the above recommendations, we append LFA's submission to the RSPCA Victoria Independent Review, dated 8 July 2016, for the Commission's consideration.

In conclusion, LFA takes the view that structural flaws in governance have allowed a corporatised (in part, multi-national) sector of Australia's farm animal industry, with a perceived or actual (short term) financial interest in minimising welfare gains, to dictate Australian farm animal policy. This has resulted in the exclusion of scientific and other expertise reflected in world's best practice in the agricultural realm. Both for animal welfare and productivity reasons, LFA supports the restructure and de-fragmentation of governance – including monitoring and enforcement – in relation to farm animals, and, indeed, all animals in Australia.

Thank you for considering this submission. Should the Commission have any queries, please feel free to contact Lawyers for Animals via email:

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Yours faithfully,

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President

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⁹ For example, see RSPCA Victoria 2014-2015 Financial Report, available at: http://www.rspcavic.org/documents/About%20us/Annual%20Report/2015/RSPCAVIC_Financials_2014-15.pdf

APPENDIX 1: Lawyers for Animals' submission to the RSPCA Victoria Independent Review, dated 8 July 2016

Founded in 2005, Lawyers for Animals Inc. (“LFA”) is a (not-for-profit) animal law think tank based in Melbourne. We are committed to alleviating animal suffering through education and law. Since mid-2013, LFA has partnered with Fitzroy Legal Service to provide Australia's first Animal Law Clinic: a free legal advice service assisting clients whose interests are likely to coincide with those of the animal(s) legally concerned. During 11 years of operation, LFA has accreted knowledge and practical experience of the animal welfare system, including the role and practice of RSPCA Victoria (“RSPCA”).

LFA recognises the enormous and unenviable burden borne by RSPCA – a charity – in attempting to fulfil a government function: law enforcement. LFA submits that as a non-government, charitable body, RSPCA is fundamentally incapable of ongoing animal cruelty law enforcement, whereas Victoria Police is. There are three main reasons for this:

1. Perpetual resource deficiencies. RSPCA receives about one third of its annual Inspectorate budget from government. Their total Inspectorate budget allows employment of ten full-time inspectors on average – with only one rostered on weekends. Based on there having been 10,740 cruelty reports received in 2014-15, that means an average of four cruelty reports per day for each Inspector to thoroughly investigate, prosecute or otherwise resolve, as well as to organise care of vulnerable animals. That is simply impossible. Hence, large numbers of cruelty reports are necessarily ignored or not properly investigated or prosecuted. Little wonder that despite 10,740 cruelty reports, only 69 cruelty prosecutions were finalised by RSPCA in 2014-15 (0.64%). RSPCA relies on charitable donations and bequests to cover the two-thirds shortfall in what is already a totally inadequate Inspectorate budget. To attract donations/bequests and ongoing government funding, RSPCA attempts to maintain public confidence by projecting strength and stability. Underneath, the stresses of financial deficit and being inherently unsuited to law enforcement erodes its integrity and morale. Staff and animals suffer the consequences. The Government is not directly blamed for the failures to enforce animal cruelty laws, so they do not feel the full force of public fury when animals suffer unnecessarily over prolonged periods – such as under Bruce Akers' and Heather Healey's care. Without such public pressure, the Government is less inclined to prioritise resources appropriately. The city of New York faced a very similar situation before the ASPCA and NYPD devised a joint-solution, now also endorsed by the Animal Legal Defense Fund, see:
 - <http://www.aspca.org/about-us/press-releases/nypd-aspca-partnership-reports-record-breaking-number-animal-cruelty-arrests>
 - <http://www.aspca.org/animal-protection/nypd-partnership>
 - <https://www.policeone.com/police-jobs-and-careers/articles/6719145-NYPD-takes-over-after-ASPCA-closes-enforcement-unit/>
2. Lack of power and public attitudinal change. Animal cruelty reporting is expanding commensurate with increased public awareness of animals' right not to suffer and society's growing intolerance of animal cruelty. Animal cruelty is regarded by offenders and (to a decreasing extent) the general public, as child abuse and domestic violence once were: private matters between a person and

their 'property'. Unless responsibility for animal cruelty law enforcement is transferred to a dedicated, adequately resourced squad within Victoria Police, examples of failure to protect animals will increase. In contrast to Victoria Police, RSPCA Inspectors have extremely limited powers of entry to residences and/or arrest; no weapons or other training to equip them to deal with situations of violence; and no public imprimatur for strong law enforcement.

3. Lack of financial indemnity. No law enforcement agency – police or otherwise – can operate effectively when it is not indemnified for debts resulting from civil proceedings, occasioned by its enforcement work. On 10 September 2015, RSPCA was refused leave to appeal against a judgment ordering it pay \$1.167m compensation for what His Honour Judge Bowman of the County Court had determined was a negligent destruction of cattle undertaken in May 2003 [RSPCA v Holdsworth [2015] VSCA 243]. This one case has substantially impacted on RSPCA's budget – which was already in deficit, requiring it to obtain a bank loan which must now be repaid. It is likely to have undermined RSPCA's confidence in enforcing animal cruelty laws, especially following its unsuccessful prosecution of the parties in the Ballarat Magistrates' Court in 2005. The financial risks are simply too great and (apparently) uninsurable, at least by RSPCA. All law enforcement agencies should be indemnified by the governments to which they are responsible.

With our last few words, we outline a constructive alternative for the Review's consideration:

- (a) creation of a dedicated Animal Cruelty Investigation Squad (“ACIS”) within Victoria Police;
- (b) creation of an Office of Animal Welfare within the Department of Justice to oversee ACIS and fulfil many functions of the former Bureau of Animal Welfare, keeping it independent from the Department of Agriculture; and
- (c) removal of RSPCA's Inspectorate powers and funding, permitting it to refocus on animal care.

Victorians don't expect human welfare charities to enforce our criminal laws, so it's high time we stopped expecting the RSPCA to enforce our animal cruelty laws.