



Submission to the Australian Productivity Commission Review of Philanthropy

The Animal Law Institute is a national not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system.

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Philanthropy inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601, Australia

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Philanthropy Inquiry

Introduction

The Animal Law Institute (**ALI**) welcomes the opportunity to make this submission to the Productivity Commission's philanthropy inquiry.

ALI is a registered charity and a not for profit community legal centre that is dedicated to protecting animals and advocating for their interests through the Australian legal system. ALI is a member of the Victorian Federation of Community Legal Centres and the National Association of Community Legal Centres.

ALI currently provides the following services, pursuant to a Victorian government grant:

- Supporting members of the Victorian community to challenge unethical companion animal breeding practices (colloquially known as 'puppy farming', leveraging the rights afforded to consumers under the Australian Consumer Law).
- Undertaking research for other strategic litigation opportunities that advance the animal protection movement.

As an animal protection organisation that is not directly involved in the short-term direct care and rehabilitation of lost or mistreated animals, ALI is not eligible for deductible gift recipient (**DGR**) status. This has adversely impacted our ability to obtain funds (and, where we have obtained funds, our ability to undertake certain animal protection work due to conditions attaching to those funds), hire staff on a long-term basis, provide continuity of service, and continue certain community building activities.

Animal protection is important to many Australians and we believe that there would be broader societal benefits to DGR status being afforded to animal protection charities.

Summary of recommendations

Our recommendation is that DGR status be expanded to include charities working to protect animals, including through policy advocacy, legislative reform, and strategic litigation (relevant to point 5 in the Terms of Reference).

To support this recommendation, this submission seeks to demonstrate the following:

1. Lack of DGR status has had a material adverse impact on ALI's ability to provide high-demand services
2. Animal protection is important to Australians
3. DGR status for animal protection organisations could bring much needed balance to our democracy

Lack of DGR status has had a material adverse impact on ALI's ability to provide high-demand services

As an animal protection organisation, ALI is not eligible for DGR status. While 'preventing or relieving the suffering of animals' is a recognised charitable purpose in s 12 of the *Charities Act 2013* (Cth), ALI is excluded from DGR status because of the way that s 30.45 of the *Income Tax Assessment Act 1997* (Cth) narrows that down to organisations whose principal activity is 'providing short-term direct care to animals...' or 'rehabilitating orphaned, sick or injured animals...'. We believe almost all other community legal centres in Australia have DGR status.

Lack of DGR status has significantly impacted ALI's ability to provide services that are in high demand in the community. We explain this further, with a brief summary of the organisation's history.

ALI was started in 2014, to protect animals and advocate for their interests through the Australian legal system. It was founded by, and initially entirely run by, volunteers. Through an extensive volunteer network, between 2014 and 2020, ALI:

- provided pro-bono advice to leading animal protection organisations;
- represented clients in litigious matters where we saw the case had potential to advance the animal protection movement;
- offered an Australia-wide animal law moot competition (ANIMAL). In 2019, 17 teams across 14 universities participated in ANIMAL; and
- contributed to public policy discussion through submissions relating to animal protection.

In that period, demand for ALI's services, particularly legal advice, was high and increasing – well above what the organisation had capacity to provide. We were also inundated with offers from university students and young lawyers wishing to volunteer with ALI. At one point, ALI had over 50 active volunteers and we had to stop accepting applications.

However, the volunteer model proved impossible to sustain. A few of our core volunteers, including one of our founders, experienced burn out and left the organisation. We were also impacted by the

fact that many of our key volunteers were women who struggled to maintain their volunteer work after having children. We recognised that we needed to have some paid staff in order to make ALI sustainable. This required us to look at significantly increasing sources of funding. While seeking funding is always a daunting exercise, we felt the organisation had a very strong track record of voluntary work that would enable us to transition from a solely volunteer run organisation.

In 2020 and 2021 we explored various options including looking at grant applications and seeking funding from philanthropic foundations. Our lack of DGR status significantly hampered our efforts to obtain funding. Most donors (especially those looking to make substantial donations in the thousands or tens of thousands) wanted to receive a tax deduction for their donation. DGR status was also a prerequisite of funding from many philanthropic grants, trusts and foundations. Not having that status prevented us from applying for that funding.

We were ultimately successful in obtaining grant money from the Victorian government. While we are very grateful to the Victorian government for recognising and supporting our work, we note two major limitations with relying almost exclusively on government grants.

First, government grant giving is (probably for good reason) a slow moving process. In September 2021, ALI submitted an application for funding from the Victorian government in order to continue a particular line of work (our puppy farm clinic) for a two-year period. In March 2022 we were advised that the application was successful. However, we did not receive the funds until November 2022. Despite strong and continued interest from the Victorian public in utilising the services of this clinic, because of this delay we were forced to close the clinic for a period of 6 months.

Second, because of industry influence in government decision making on issues related to animal welfare (discussed below), we believe governments are unlikely to provide us with funding for the full range of work we wish to do and for which there is great demand (as discussed below), such as: challenging existing laws relating to animal protection or assisting other animal protection organisations with their legal strategies.

The services ALI now provides, in accordance with the terms of the grant, is limited to:

- Supporting members of the Victorian community to challenge unethical companion animal breeding practices (colloquially known as ‘puppy farming’, leveraging the rights afforded to consumers under the Australian Consumer Law).
- Undertaking research for other strategic litigation opportunities that advance the animal protection movement.

Notwithstanding the fact we are an Australian organisation, working on addressing animal protection issues in Australia, with a local community and support base that cares deeply about animal welfare (as discussed below), ALI is currently considering whether it is possible to obtain funding from overseas grant-giving organisations that value animal protection and do not require grant recipients to have DGR status.

Animal protection is important to Australians

The evidence indicates, clearly in our view, the Australian community cares deeply about the welfare of animals:

- The RSPCA was Australia's most 'considered' charity in 2022, as ranked by YouGov (rankings are based on the Consideration score from YouGov BrandIndex, which asks respondents "If they asked tomorrow, which of the following charities would you be likely to donate \$1 to?").¹
- The Productivity Commission's 2016 Inquiry Report into the regulation of Australian agriculture found that Australians place value on the welfare of farm animals and expect, and benefit from knowing, that farm animals are being treated humanely:
 - o 'Farm animal welfare is important both to consumers of animal products as well as others in the community (those who are not consumers of animal products and are not directly involved in the production of animal products) who feel concern or discomfort about the mistreatment of animals. Viewed in this way, farm animal production can impose negative externalities on society...'²
 - o '... minimum level of welfare can be thought of as a public good as all (or many) members of society derive a benefit from it'.³
- A 2018 Australian government commissioned report, 'Commodity or Sentient Being? Australia's Shifting Mindset on Farm Animal Welfare' found that 95% of people view farm animal welfare to be a concern and 91% *want at least some reform to address this*.⁴
- Research from the Responsible Investment Association of Australia shows that avoiding animal cruelty is the number one issue consumers want to avoid in their investments (even above human rights violations and climate change concerns).⁵
- In the most recent review of the national poultry code, over 100,000 public submissions were received.⁶

This is all evidence about contemporary attitudes. But the public's concern for animal protection is longstanding. As the Minister, in 1979, reading the bill to Parliament which became the *Prevention of Cruelty to Animals Act 1979* (NSW) said:

The fact that legislation for the protection of animals was introduced in New South Wales as early as 1851 is evidence that the general public has long been concerned over the issue of cruelty to animals. It is indeed disappointing in this age of modern technology and scientific achievement that there is a need for legislation to protect living creatures that cannot fend for themselves from a small number of irresponsible and callous individuals who have no respect for life and feeling. Over the years a number of organizations have been established

¹ <https://business.yougov.com/content/40023-yougov-australia-2022-charity-rankings>

² <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf> at 204.

³ <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf> at 205.

⁴ This report is no longer available on government websites but a copy can be downloaded by following the link in this article: <https://www.beefcentral.com/news/activists-aside-how-does-the-general-public-view-farm-animal-welfare/>.

⁵ https://responsibleinvestment.org/wp-content/uploads/2022/03/From-Values-to-Riches-2022_RIAA.pdf

⁶ <https://www.abc.net.au/news/rural/2018-02-20/protests-over-caged-eggs-have-farmers-worried/9461064>.

by concerned citizens for the express purpose of ensuring the welfare of animals. As honourable members would be aware, they have made a significant contribution in bringing forward the problems faced by animals and expressing the concern of the citizens of this State about a number of cruel practices and inadequacies of the present legislation.⁷

We wish to make similar contributions. But we believe our lack of DGR status represents a material brake on our ability to do so.

If government wishes to increase donations to charities, and increase the ability of charities to build social connections, we believe it needs to give DGR status to organisations working on the causes that Australians are so passionate about.

DGR status for animal protection organisations could bring much needed balance to our democracy

There are serious concerns about the extent to which industry interests have influenced government policy and regulation relating to animal protection, to the detriment of the public interest. We believe granting DGR status to charities involved in animal protection advocacy is an important step towards addressing this.

In its 2016 Inquiry Report into the Regulation of Australian Agriculture, the Productivity Commission observed the lack of independence in the process for setting industry-based animal welfare codes of practice.⁸ Since that report, there have been several examples of strong evidence of regulatory capture in other contexts relating to animal welfare, including:

- suggestions of government and industry collusion in the development of the Draft Australian Animal Welfare Standards and Guidelines for Poultry, resulting in the drafts standards and guidelines containing animal protection provisions that fall below community expectations;⁹

⁷ New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 November 1979, 2924 (W F Crabtree, Minister for Lands and Minister for Services).

⁸ <https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf> at 22, 199, 218-221, 223-227.

⁹ Documents obtained under a freedom of information request suggested that:

- Members of the NSW Department of Primary Industries took part in meetings with poultry producers before the standards-writing process had begun to 'set the scene for SAG [stakeholder advisory group meetings]' including 'what will be accepted / not accepted'.
- Sections of the draft Regulatory Impact Statement were sent to each industry body in the Stakeholder Advisory Group, except for the animal welfare representative bodies
- A veterinary officer for the NSW Department of Primary Industries suggested removing the requirement that birds have 'sufficient space to stand and stretch limbs' because 'you can't do this in a battery cage'
- The two not-for-profit animal protection organisations involved in the standard setting process, Animals Australia and the RSPCA, had to pay \$3000 each to cover the costs of considering extra policy options for hen-stocking densities. Professor Thomas Clarke, who at the time headed the Corporate Governance Research Centre at the University of Technology Sydney, was reported saying that the practice of stakeholders having to pay for policy considerations to be heard was 'worrying' and in his experience, not consistent with the practices of accountable government
- The standards writing process was otherwise funded by industry-stakeholders and the NSW government gave precedence to the views of 'funding partners', including in relation to whether a full

- the regulation of (or failure to properly regulate) live sheep export from Australia to the Middle East, with strong suggestions that the relevant government department sought to protect industry interests notwithstanding consistent evidence over decades that this trade was inimical to acceptable animal welfare standards;¹⁰ and

and independent review of scientific literature should be undertaken. The NSW government was not prepared to undertake a full and independent review of scientific literature on bird animal welfare. The Western Australian Government and the Victorian Government raised concerns about the fact the NSW government was not prepared to undertake this review, and the Victorian government subsequently conducted its own review. The findings of the Victorian Government's review were not reflected in the Draft Standards the subject of public consultation or the Regulatory Impact Statement. Professor Thomas Clarke said of the process generally, 'It looks from all appearances as an act of systematic corruption which we thought we had banished from the government in Australia...'

See: James Thomas and Alison Branley, 'Egg farmers accused of colluding with Government department to sabotage moves to outlaw battery hens', ABC (21 Dec 2017) available here:

<http://www.abc.net.au/news/2017-12-21/egg-farmers-accused-of-colluding-with-nsw-government/9229242>;

Voiceless, Submission to Animal Health Australia on the *Proposed Draft Australian Animal Welfare Standards and Guidelines for Poultry* (26 February 2018) available here:

http://www.animalwelfarestandards.net.au/files/2015/07/m34_Voiceless.pdf; ABC, 'Allegations of backroom deals to keep battery hen eggs on the market', aired Thursday 21 Dec 2017.

¹⁰ In April 2018, 60 Minutes released whistle-blower footage taken from five 2017 live sheep export voyages from Australia to the Middle East. The footage showed a complete failure by the live exporters to meet minimum animal welfare standards and sparked outrage in the community. More relevantly, it exposed a regulator – then named, the Department of Agriculture and Water Resources – that had known about serious animal welfare issues in the trade, had repeatedly failed to act on independent and expert advice, and failed to take any disciplinary action even when it had evidence of non-compliance with animal welfare standards. Prior to the footage being released:

- there had been at least ten government and parliamentary reviews since 1985 examining the live export system and its associate animal welfare issues. A 1985 review of the live sheep trade by the Senate Select Committee on Animal Welfare reported: 'if a decision were to be made on the future of the trade purely on animal welfare grounds, there is enough evidence to stop the trade. The trade is, in many respects, inimical to good animal welfare ... The Federal Government should promote and encourage the expansion of the refrigerated sheepmeat trade to the Middle East and other countries, with the aim of eventually substituting it for the live sheep trade.' The 2003 Keniry Review recommended that exports be banned when the available evidence indicates risk is high, such as shipments leaving southern Australian ports in the winter months. This recommendation was rejected.
- there were a number of public animal welfare disasters relating to the live sheep export trade including: the 2003 MV Cormo Express incident, Animals Australia's 2003 investigation which resulted in the WA government attempting to charge a live exporter and its two directors with animal cruelty offences (they were acquitted on a Constitutional technicality), Animals Australia's December 2006 investigation in Egypt which resulted in the live export of sheep to Egypt being suspended – it resumed in 2014; ABC's Dec 2010 broadcast of the treatment of Australian sheep in Kuwait and the 2012 MV Ocean Drover incident where ABC's Four Corners aired footage of the brutal culling of Australian sheep in Pakistan; and the 2014 incident where 4000 sheep died of heat stress travelling to the Middle East.
- an industry vet, Dr Lynn Simpson, submitted a report to a government steering committee that was reviewing Australia's standards for live export. The report showed photographic evidence of animal cruelty and documented numerous breaches of animal welfare standards. Following the publication of the report, the government dismissed Dr Simpson on the basis that 'the industry with which we engage has expressed the view that they cannot work with you',

- the introduction of 'free-range' egg labelling laws which (in response to several successful ACCC prosecutions against egg producers using the label 'free range' in circumstances found by the courts to be misleading) effectively gave egg producers the right to mislead consumers about animal welfare standards.¹¹

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- between 2005 and 2018, the directors of Emanuel Exports (the exporter the subject of the 60 Minutes footage) were involved in 37 separate voyages on which over 1,000 animals perished on each shipment,
 - the Department of Agriculture and Water Resources did not identify any instances of non-compliance with the Australian Standards for the Export of Livestock (ASEL) in relation to any of the five 2017 voyages, notwithstanding the documented high mortality rates,
 - reportable mortality reports available on the Department's website suggest that prior to the 60 minutes broadcast, a high mortality event had never resulted in any disciplinary action taken against an exporter. At most it resulted in additional requirements being placed on the exporter, but typically only for their next live export.

Even now, a 2023 report from the Inspector General that was appointed to oversee the Department (now the Department of Agriculture, Fisheries and Forestry) following the broadcast of the whistleblower footage, included the following: 'The inspector-general has observed, on a number of occasions, the industry perception of the department as a facilitator of the export livestock industry. The department continues to struggle to clearly communicate that while it has an overarching role in facilitating the livestock export trade, it also regulates participants in that trade and must ensure compliance.'

Sources:

www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/Chronology/LiveExport;
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Significant_Reports/animalwelfare/cte/exportlivesheep/index; <http://www.animalsaustralia.org/investigations/kuwait-2003.php>;
http://www.banliveexport.com/documents/AI_Kuwait_Reasons2.pdf;
<http://www.abc.net.au/news/2016-06-22/live-export-vet-removed-after-revealing-conditions-on-ships/7501428> (this article includes screenshots of the letter of dismissal the Department sent to Dr Simpson); <http://www.animalsaustralia.org/features/lynn-simpson-a-life-live-export-stories.php>;
<https://www.theage.com.au/lifestyle/liveexport-whistleblower-vet-i-wish-now-id-shot-more-20160901-gr6fka.html>; <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities/sheep-qatar-kuwait-uae-report-69>;
<http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities>; <http://www.vale.org.au/high-mortality-voyages.html>; <http://www.agriculture.gov.au/export/controlled-goods/live-animals/live-animal-export-statistics/reports-to-parliament>; <http://www.agriculture.gov.au/export/controlled-goods/live-animals/livestock/regulatory-framework/compliance-investigations/investigations-mortalities>;
<https://www.iglae.gov.au/sites/default/files/2023-04/communication-and-engagement-in-livestock-export-regulation.pdf>.

¹¹ Following those ACCC prosecutions, the federal government introduced a safe harbour defence for egg producers. The safe harbour defence allows egg producers to label eggs as 'free range' in circumstances that arguably do not meet consumer expectations of the higher welfare standards implied by the term. Birds can be kept at stocking densities of 10,000 birds per hectare. By comparison, the stocking density for free range eggs in the CSIRO Model Code of practice is 1500 birds per hectare. It also allows for birds to undergo routine mutilations such as beak trimming (a practice more likely to be required at high stocking densities). Respondents to a 2012 focus group study (conducted by Australian Egg Corporation Limited) met the idea of beak trimming with 'disgust', noting that it sounded 'cruel and horrible' - a position that is inconsistent with the notions of high animal welfare that consumers associate with the term free range and for which they are paying a premium.

The practical result of this level of industry influence is that animal welfare standards in Australia often do not reflect contemporary animal welfare science,¹² are falling behind standards in other developed countries,¹³ fall well below the public's expectations,¹⁴ have a questionable impact on animal welfare¹⁵ and fail to reduce the risk of serious animal welfare incidents¹⁶.

The loudest voice in public policy should be the public. As evidenced above, the public is concerned about issues relating to animal welfare, and their interests are being repeatedly ignored in favour of industry. Currently DGR status is not available to charities that want to protect animals by building community engagement and engage in the policy debate on animal welfare topics. Granting DGR status to groups working on policy, legislative and other legal change for the protection of animals would result in more involvement by better-funded charities, increase community engagement and allow a more sophisticated, inclusive and balanced public conversation.

We thank the Productivity Commission for considering our submission.

Should the Productivity Commission have any questions regarding this submission, please do not hesitate to contact The Animal Law Institute via email at contact@ali.org.au.

Yours sincerely

The Animal Law Institute Limited

Sources: <https://www.accc.gov.au/media-release/accc-releases-guidance-on-free-range-egg-standard#:~:text=Under%20the%20new%20Standard%2C%20egg,forage%20on%20the%20outdoor%20range;> <https://www.publish.csiro.au/book/3451/>; Brand Story, 'Project Equilibrium, Qualitative research to determine consumer perceptions of free-range stocking densities', 11 May 2012 at 43.

¹² The fact the current and proposed poultry standard still permits battery cages is a clear example of a standard being based on what is in the interests of the industry rather than on animal welfare science.

¹³ A comparison with equivalent standards in other developed nations show that the current Australian farm animal welfare standards are falling short of best practice. Existing Australian standards allow for outdated intensive farming, invasive husbandry procedures, and body mutilations without pain relief, as well as a range of out-dated approaches to pest control and long-distance transportation. For example, battery cages are still legal in Australia whereas they have been banned or are being imminently phased out in Europe, New Zealand, Canada and certain states in the United States (California, Michigan and Oregon): Agriculture Victoria, *Farmed Bird Welfare Science Review* (October 2017) p 21. World Animal Protection ranks Australia D in its Animal Protection Index <https://api.worldanimalprotection.org/>.

¹⁴ Futureye, *Australia's Shifting Mindset on Farm Animal Welfare* (2018); Productivity Commission, 'Regulation of Australian Agriculture' Inquiry Report No. 79, 15 November 2016 p210; J Goodfellow, M Tensen & L Bradshaw. 'The Future of Animal Welfare Policy and its Implications for Australian Livestock Industries' (2014) *Farm Policy Journal*, vol. 11, no. 1; P Parbery & R Wilkinson, *Victorians' Attitudes to Farming*, Department of Primary Industries, Victoria, 2012.

¹⁵ Geoff Neumann and Associates, *Review of the Australian Model Codes of Practice For the Welfare of Animals*, Final Report (2005) cited in Productivity Commission, 'Regulation of Australian Agriculture' Inquiry Report No. 79, 15 November 2016 p208-9.

¹⁶ Live export being the most obvious example.