Notes for submission to the NSW Animal Welfare Reforms Issues Paper

Link : NSW Animal Welfare Reform - Issues Paper

Submission by Humane Research Australia. April 27 2020.

Page 10 – Interaction of the Acts

States "Research involving animals must be conducted in accordance with requirements under the ARA, which includes licensing and ethics approvals. Conducting research in compliance with these requirements ***provides a defence to breaching some provisions under POCTA***."

This, together with the *Australian code for the care and use of animals for scientific purposes (2013)* illustrates our concerns in that many procedures may be legally undertaken which would ordinarily be considered a breach of animal cruelty laws.

Page 12 – Comparison with other jurisdictions

It is illogical that standards differ between states and territories. They should be consistent, and this can only be achieved through a federal agency. This is especially applicable to animal experimentation as it is so often conducted for the (perceived) benefit of human health – a federal issue. Noting also that the *Australian code for the care and use of animals for scientific purposes (2013)* is a federal code, albeit adopted into state/territory legislation.

Page 14 – Objects of the ARA- question 1

In response to question "*Is there anything additional to the current objects that should be included in the objects of new animal welfare laws?*"

ARA – To ensure animals are not subjected to procedures that duplicate research already conducted or considered unjustified due to the availability of non-animal methods.

Page 15 – question 2.

Do you have any comments on the interactions between the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?

See our concerns re page 10.

It is our opinion that the legislation should be combined, however this should not weaken protection for animals used in research simply by creating multiple exemptions for research animals as other State and Territories have done.

Page 16 – Defining key terms – Animal

The definition includes crustaceans "but only when at a building or place (such as a restaurant) where food is prepared or offered for consumption by retail sale in the building or place". We question why the location is relevant, as recognising that they are subject to

suffering in a restaurant setting should reasonably follow that they are also capable of similar suffering within a different context such as research.

Similarly, cephalopods are "currently afforded protections through the Australian code for the care and use of animals for scientific purposes". It should therefore follow that they be included in the POCTA, and therefore protected in aquariums and restaurants.

Page 18 – Questions 3 and 4

Should additional species be included in the definition of 'animal' and therefore covered by animal welfare provisions (for example, cephalopods, crustaceans in all situations, other species)? Why? Should a consistent definition of 'animal' be used across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986? Why?

Yes, per above

There is evidence that cephalopods and crustaceans are sentient and therefore they deserve protection. These species have the capacity to suffer regardless of their intended use or situation, therefore this should be consistent against all legislation.

Page 23 – Question 5

Do you have any suggestions about how the definition of pain could be updated?

It should specifically cover mental or psychological suffering, as per other jurisdictions mentioned and the OIE. Separation of a mother and her offspring for example could be considered far greater suffering than physical pain. Similarly, both fear and boredom (leading to stereotypies) clearly involve mental and psychological suffering. Research animals and exhibition animal – sustained isolation from co-species for social species, co-species aggression preventable by proper captive management.

Page 25 – Questions pertaining to the ARA

Are there any activities currently considered as research or teaching activities under the Animal Research Act 1985 that should be excluded? If so, why?
Are there any additional activities that should be considered as research or teaching activities under the Animal Research Act 1985? If so, why?

HRA would be open to non-invasive observational research could be excluded as does not seem to meet the current legislative definition

Additional activities- Animals bred and killed without being used as it would be useful to monitor this data.

HRA would also like to see animals used for dissection included and reported against. In this respect, we wish the below to be revoked:

Division 4 Exemptions

15 Certain schools may carry on animal research without accreditation

(1) A non-government school is exempt from the operation of section 46 (1) of the Act with respect to the carrying on of the business of animal research:

(a) if the school belongs to, or is associated with, a relevant Association that is accredited under the Act, and

(b) so long as any animal research carried out at the school is carried out with the authority of an ethics committee for the relevant Association and in accordance with the Code of Practice.

(2) In this clause, relevant Association means any of the following:

(a) the Association of Independent Schools of New South Wales Limited,

(b) Catholic Schools NSW Limited.

16 School students may carry out animal research without authorities

A student at a school is exempt from the operation of section 47 (1) of the Act with respect to the carrying out of animal research, so long as the animal research is carried out under the supervision, and in accordance with the directions, of the holder of an animal research authority.

Page 27 – Are there any other terms or concepts used in the existing animal welfare legislative framework that require new or amended definitions?

Due to the vague terms used in the *Australian code for the care and use of animals for scientific purposes*, HRA would welcome more prescriptive terms. Words of qualification (regularly, suitable, essential, adequate, and necessary' or justified) should be defined.

Power of Inspectors

The following statement is of concern to us:

"inspectors authorised under the ARA have limited evidence gathering powers relative to modern legislative standards. ARA inspectors have no powers to take photographs, bring an assistant, or require a person to answer questions. The ARA also lacks clarity about digital documents and information and only refers to hard copy documents."

It is essential that they have these powers in order to provide evidence of any breaches of cruelty.
Furthermore, it is crucial that they be given the ability to conduct *unannounced* visits to animal facilities.

Page 28 – Question

Do you support aligning compliance powers and enforcement tools across the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986? Why?

Penalty infringement notices should be made available for all even if there is distinct legislation, enforceable by inspectors. If compliance is aligned, perhaps RSPCA inspectors would offer more independent inspections of research facilities than vets employed by the public service.

Page 29

Should the current provisions that require inspectors under the Animal Research Act 1985 to be public servants who are also qualified veterinarians be retained, or should they be amended to allow for a more risk-based approach? Please explain your answer.

HRA see little value in them having to be public servants. And low risk areas such as the exemplified wildlife photography could be undertaken by animal welfarists who are not necessarily veterinarians, thereby intensifying the scrutiny of more invasive research by qualified veterinarians, recognising that there are few veterinarians willing to stay employed in the animal research industry in the long term.

Page 33- Question 20

Are there any specific issues you would like to raise as we review the penalties for all offences under the Prevention of Cruelty to Animals Act 1979, Animal Research Act 1985, and Exhibited Animals Protection Act 1986?

Should be higher otherwise simply absorbed as a cost of doing business and not an effective deterrent.

Page 34- question 21

Would you support consideration of a risk-based approach to licensing under the Animal Research Act 1985 and/or Exhibited Animals Protection Act 1986, where it would not result in weakened protections for animals? Why?

Reliant on co-regulation by AEC with little external scrutiny unless a complaint is raised. Therefore, HRA would be opposed to a risk-based approach potentially weakening scrutiny further, at a time when there is exceptionally low transparency in the industry.

Page 35- question 23

Do you have any comments on what the role of panels and committees should be in supporting the new animal welfare legislative framework?

We would like to see more expertise in alternatives to animal research on the research review panel

Page 35- question 24

Do you have any final comments about this reform?

There are a number of issues of longstanding concern to HRA – specific to animal research - which we consider essential to being incorporated into the review:

Governance and Accountability

- Greater transparency and accountability of all research by institutes using animals by making publicly available all annual reports and summaries of external reviews.
- Establishment of an independent body which would enable the oversight, consistency and regulation of all aspects of animal research
- Establishment of a national database of all animal use to avoid repetition.

Community Awareness

- An informed community that can identify humane non-animal alternative goods and services and, as a result of becoming informed, can adopt these alternatives.

Ethics Committees

- The requirement of all Category C and D representatives (animal welfare and lay person respectively) on animal ethics committees to be suitably qualified to challenge each protocol on a scientific basis.
- All applications to animal ethics committees to provide evidence that alternatives have been sought such as systematic reviews.

Due to the Motion passed in the Senate this February calling for funding for alternatives to animal research and increased transparency, there is an expectation to see this reflected in state legislation. https://greensmps.org.au/articles/motion-baboons-animal-testing

Current reporting on statistics and research review panel commended and could indeed serve as model for other states, in line with the above-mentioned Motion.

Detailed research protocols and information not being released. Upon questions in Parliament, the NSW Minister Health Ministered responded this cannot be disclosed due to the Animal Research Act. This needs to change for there to be public assessment of animal research. Complaints are shared in the annual report but not adverse incidents and these must be being collated so this is public.

Draize and LD50- there are alternatives for these tests so would like to see exemptions for allowing these tests upon Ministerial approval to be removed by 2022, as indicated as a target in 2018-19 Review Panel Annual Report (for LD50).

Periodic review of AEC panels- we have concern about protocols being approved, eg. case studies with rat obesity and smoking mice detailed on the HRA website.

We advocate for the Right to Release legislation to be a separate legislative Bill rather than incorporated into voluntary codes of practice encouraging rehoming of laboratory animals.

Dogs and cats suppliers sub regulations-
https://www.legislation.nsw.gov.au/#/view/regulation/2010/425/sch2

Would like to see this revoked:

Part 2 Division 4 Clause 17

Dogs and cats may be supplied to holders of animal supply licences

A person is exempt from the operation of section 48 (1) of the Act with respect to the supply to a licensed animal supplier of dogs or cats for use in connection with animal research, so long as the person complies with the requirements of Part 3 of Schedule 1

An additional concern is the accountability of DPI. There were no inspections of research facilities in 2018-19, how is DPI being held to account? Is a recruitment delay sufficient justification for not performing legislative duties for a whole year?