

March, 2023

## **HRA RESPONSES TO THE 2023 REVIEW OF THE SOUTH AUSTRALIAN ANIMAL WELFARE ACT 1985**

### **Do you agree that the definition of ‘animal’ included in the Act is appropriate? If not, what should it be?**

HRA recommends that the definition should include cephalopods. In relation to scientific use, the Australian code for the care and use of animals for scientific purposes already applies to the care and use of cephalopods. There is reason to extend the definition of animal to crustacea for both the Code and state legislation. There is clear evidence of sentience in crustacea, as recognised in international scientific research and reflected in UK legislation. This knowledge is based on both neural and cognitive-behavioural pain criteria, which is significant given that the Code also states (in regard to assessing sentience of animals in early developmental stages): *“decisions as to their welfare should, where possible, be based on evidence of their neurobiological development.”* Furthermore, clause 1.10 of the Code specifically states *“pain and distress may be difficult to evaluate in animals. Unless there is evidence to the contrary, it must be assumed that procedures and conditions that would cause pain and distress in humans cause pain and distress in animals.”*

### **Do you agree that the provisions of Part 4 relating to the use of animals for teaching and research enable the ethical, humane and responsible use of animals for teaching and research?**

No. HRA does not feel this is possible to guarantee under all circumstances regardless of the legislative structures in place. Moreover, given the limited transparency and lack of reporting in South Australia, we are unclear as to how any external party can accurately answer this question. Our suggestions for reform are supplied in a subsequent question.

### **Do you agree that the structures and functions of Animal Ethics Committees provide appropriate arrangements and oversight for the use of animals for teaching and research?**

As the deliberations of SA animal ethics committee and their annual reports to institutions are not made publically available, HRA can answer this question only based on communications we have had with members of animal ethics committees and available literature on this subject. I also refer to a submission made to the NSW Inquiry into animal experimentation from a former SA AEC member. Please see the below link for the full submission, an extract of which is below, which suggest that the AECs are not functioning to best effect in South Australia.

<https://www.parliament.nsw.gov.au/lcdocs/submissions/78721/0252%20Mr%20Peter%20Adamson.pdf>

'Much suffering is inflicted on animals by students so that they can submit research to gain Honours degrees and Ph.D's. One student bragged, in a University of Adelaide newsletter, that his research had no practical value and was done only to satisfy scientific curiosity. He surgically altered small Australian marsupials' sexual organs to see how this would affect their behaviours when kept in an overcrowded cage. Amongst other things he found that he could cause male animals to mount other male animals. Conducting experiments merely to satisfy scientific curiosity is of course not restricted to students, and sometimes it is indulged in to provide work for academics.

Sometimes only searches can uncover extremely cruel non-approved experiments. For example, when a pregnant rat was accidentally sent the Department of Dental Surgery at the University of Adelaide, for an experiment approved by the Animal Ethics Committee, the experimenters kept the newly born rats so that they could perform very painful experiments on them that they knew would not be approved. It was only because someone informed me of this that a team was sent to investigate the allegation. It found the rats and caught the experimenters. The rats were removed but not the experimenters. In this case the whole department knew of the experiments including reception and clerical staff

Not only should experiments such as those described above be banned, but eternal vigilance needs to be instituted to deter staff and students from carrying out unapproved procedures'

Institutions should be required to provide AEC members (and researchers) with regular training and updates on non-animal alternatives. There should be a member with specialist knowledge in non-animal technologies. It is also recommended that the Chair is not directly associated with the institution.

HRA advocates that AEC annual reports to their institution are made publically available.

#### **Are there any other areas of the Act or regulations that could be improved to:**

- promote animal welfare in South Australia
- better meet community expectations of animal welfare in South Australia?

#### **Mandatory Reporting Requirements:**

The lack of statistics reporting means that the 3Rs principles (replacing, reducing and refining) animal use in research, or any other policies that aim to limit the use of animals in research and teaching, are very difficult to implement, given that there is no accurate way of measuring change. It also results in limited accountability for public-funded research. It was in 2013 when South Australia last collated and published their annual animal use

data. This contracts with Victoria, New South Wales and Tasmania, which collate and publish their statistics annually with comprehensive summary reports.

The Proposed Australian Openness Agreement will not meet all requirements and recommending licences become signatories is insufficient. The Agreement will not require institutions to provide the level of detail typically provided by the compilation and publishing of annual animal use report, which detail number of animals used, species, levels of severity, purpose of research etc. It is not the intention of the Openness Agreement to re-direct accountability from regulators to research institutions.

### **Non- compliance with the Australian code for the care and use of animals for scientific purposes should be an Offence**

#### **The current status of the Code needs clarification.**

- Section 16 of the Animal Welfare Act 1985 (SA) prohibits the use of animals for research without a licence. Section 19(4) provides an offence for failure to comply with a condition of a licence.
- However, section 19(2)(f) states the Minister **may** impose licence conditions, including “requiring the holder of the licence to comply with such provisions of the Code as may be specified in the conditions.”
- Section 25(1a) provides that “In performing its functions, an animal ethics committee must comply with the Code.”
- Each offence carries a maximum penalty \$50,000 for a corporation or \$10,000 for an individual.

### **Significantly, Code is omitted from Regulation 5 of the corresponding Regulations, which creates an offence for non-compliance with named codes of practice.**

#### **Proposed Reform**

Amend section 19 of the *Animal Welfare Act 1985* (SA) to insert new proposed subsections:

*19(X) A licence under this Part is subject to mandatory compliance with the Code.*

or

*19(5) Where compliance with the Code is a licence condition, noncompliance with any part of the Code is an offence under subsection (4).*

or

*19(5) A licence holder who contravenes or fails to comply with the Code is guilty of an offence.*

*Maximum penalty: In relation to a body corporate -- \$50,000. In relation to a natural person -- \$10,000.*

**It is also important to make the Code a 'prescribed' Code of Practice, by including it in Schedule 2 of the *Animal Welfare Regulations 2012 (SA)*. Under regulation 5, there is a penalty of \$2,500 for noncompliance with a prescribed Code of Practice**

### **Lethality Tests**

In Australia, animal experimentation often relies on 'death as an end point' testing. It is not only expected that animals used in these experiments will die, but it is in fact the intended aim of the experimental design. These kinds of lethality tests are inherently problematic for animal welfare.

The 'Lethal Dose 50' Test is a procedure in which any substance is administered to animals for the purposes of determining the concentration or dose of the substance which will result in death of 50% of the animals. Animals are forced to ingest, inhale, be exposed to or be injected with a particular substance, until half the animals die. The remaining half, though alive, will have suffered greatly through the experiment, as lethality testing is generally conducted without pain relief.

As a test that guarantees serious animal suffering and loss of life, lethality testing should be prohibited. Short of this, it is essential that the use of lethality tests is strictly regulated and reserved only for exceptional cases. To this end, it is a small and reasonable expectation that all lethality testing should be subject to ministerial approval in Australia.

In NSW, use of the LD50 test for product testing may only be approved by an AEC on concurrence with the Minister, given on recommendation by the Animal Research Review Panel. Similarly, in QLD, use of the LD50 test requires written approval from both an AEC and the Chief Executive. In VIC, use of the LD50 test is not permitted unless the objective cannot be achieved by any other scientific means, is approved by the Minister and is related to certain (yet broad) scientific outcomes.

In SA, the use of the LD50 test is prohibited unless the assessment relates to research that has the potential to benefit human or animal health, and the objectives of the assessment cannot practicably be achieved by means that will cause less pain to animals. Ministerial approval is not required.

The legal framework in SA, ACT, NT, TAS and WA must be urgently amended to meet the minimum standard set by other jurisdictions in Australia.

**Suggestion:** Amend regulation 11(1) of the Animal Welfare Regulations 2012 (SA) to insert proposed sub-regulation:

11 (1)(e) 'the undertaking of an activity described in subsection (a) or (b) has been approved in writing by the Minister.'

## **Replacement**

Replacement and the development of alternatives has already been legislated in numerous international jurisdictions. For example, the United Kingdom's *Animals in Scientific Procedures Act 2012* legally requires the Secretary of State to support the development and validation of alternatives.

Replacement reform is intended to legislate clause 1.18 of the Code and establish an offence to use an animal where a validated alternative is available.

Recommendation: Mandate State department funding for development and validation of non-animal technologies, in parallel with mandating compliance with the Code.

## **Prohibited Procedures**

Amend regulation 11 of the Animal Welfare Regulations 2012 (SA) to insert a new proposed sub-regulation (3): 'A person must not expose an animal to forced swim testing or nose-only forced inhalation procedures.' A maximum penalty of at least \$2,500 should be applied to this regulation, to align with other prohibitions under regulation 11.

For further detail on the animal welfare implications and scientific case opposing these methods, please see <https://www.humaneresearch.org.au/forced-to-smoke/> and <https://www.humaneresearch.org.au/forced-swim-test-at-australian-universities/>