



**HUMANE SOCIETY
INTERNATIONAL**
EUROPE



**HUMANE SOCIETY
INTERNATIONAL**
AUSTRALIA

The EU-Australia Free Trade Agreement Animal Welfare and Wildlife Trade Provisions



August 2018

The EU-Australia Free Trade Agreement

Animal welfare and wildlife protection provisions

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The EU-Australia Free Trade Agreement

Animal welfare and wildlife protection provisions

1. Introduction

In June 2018, the European Union and Australia formally opened negotiations for a free trade agreement. Australia is presently ranked as the EU's nineteenth largest trading partner in goods, while the EU is Australia's third largest trading partner.¹

The proposed trade agreement between the EU and Australia is viewed by both parties as an opportunity to increase trade and the deal is likely to further increase trade - or, at a minimum, increase trade opportunities - in animal agricultural products, including meat, egg and dairy products. Likewise, while Free Trade Agreements (FTAs) open markets, create business and employment opportunities, and can increase economic growth, new increased access to markets also leads to increases in legal and illegal trade in a wide variety of products, including wildlife and wildlife products.

Trade agreements also often seek to achieve regulatory alignment between the Parties. There are a wide range of products, such as pesticides, biocides, pharmaceuticals and their chemical ingredients, which must undergo safety testing and assessment, a process which continues to rely heavily on the use of animals. There are, however, legislative differences between EU and Australia with respect to the welfare of animals used in laboratories. Animal testing for cosmetics is, for example, prohibited in the EU and there is also a legal requirement to ensure application of the 3Rs (replacement, reduction and refinement of animal use) in both (biomedical) research and product testing in the EU.

1.1. Humane Society International's vision on trade

Humane Society International (HSI) maintains that trade agreements, if drafted appropriately and allocated necessary resources, can offer a platform to influence positive change for the lives of animals. It is, therefore, vital that there is a high level of ambition for the trade deal between the EU and Australia, which needs strong provisions to ensure the protection of all animals that may be affected by trade, whether they may be on the farm, in laboratories or in the wild. This also means that animal welfare should be a consideration - where relevant - across the whole agreement and should not be overlooked in the parties' desire to remove trade barriers and increase trade flows.

1.2. Outline of present briefing

The present briefing provides an overview of the current nature of the trade between the EU and Australia with regard to animal products and the divergences in legislative standards for farm animal welfare, wildlife protection and animal testing; a detailed legislative comparison can also be found in the annexes. The briefing also examines the commitments regarding animal welfare and wildlife protection that have been made by both the EU and Australia in their existing bilateral and regional trade agreements with other Parties, given that this has bearing on the minimal level of ambition that can be expected in this new FTA. Firstly, however, we will outline our own recommendations and suggestions with regard to issues and language that we advocate for inclusion in the proposed trade agreement between the EU and Australia.

¹ <http://ec.europa.eu/trade/policy/countries-and-regions/countries/australia/>

2. What commitments to protecting animals should be made in the EU-Australia FTA?

Humane Society International believes that when liberalising trade, it is vital that due regard be paid to the welfare and protection of animals. As will be outlined in section 3, the EU has paved the way for the regular inclusion of animal welfare considerations in FTAs by requiring its trading partners to commit to cooperating on animal welfare in its most recent trade agreements. Australia has regrettably not yet included such commitments in its trade agreements.

Further to this, both the EU and Australia have also made explicit commitments to, for example, combating wildlife trafficking and Illegal, Unreported and Unregulated (IUU) fishing. However, thus far there has been only limited language in a couple of EU FTAs relating to animal testing in connection with data protection and duplication of tests on vertebrate animals; while only animal testing for cosmetic products is mentioned in the SAFTA, TPP and CPTPP agreements to which Australia is a signatory.

2.1. Farm animal welfare: Sanitary and Phytosanitary (SPS)/Regulatory Cooperation

While farm animal welfare standards are currently higher in the EU (see section 6 below), both EU and Australian citizens recognise the importance of advancing animal welfare standards. The protection of animal welfare is an issue of public morality and should be recognised as a legitimate trade concern.² The proposed trade agreement should reflect this and include meaningful provisions that can engender a positive change for animals kept for production purposes.

2.1.1. Animal sentience

The point of departure with regard to animal welfare in this proposed agreement should be an explicit recognition of animal sentience. Any agreement negotiated should include language reflecting this.

2.1.2. Regulatory alignment

It is crucial that the level of protection currently afforded to farm animals in the EU is upheld. The more advanced EU standards should serve as a minimal starting point for negotiation on specific animal product categories. Ideally farm animal welfare standards should be harmonised upwards to achieve equivalence.

This alignment of regulatory standards, however, should not be restricted to the slaughter and stunning of animals, but should also relate to the breeding, holding, handling and transport of animals. On farm welfare (including housing, painful mutilations, and feeding practices) and the protection of welfare of live animals during transport should also be covered in any animal welfare provisions in this agreement.

It is also important that the Parties maintain the right to regulate in order to further improve animal welfare in the future.

The mutual recognition of standards is not an acceptable approach since it requires that one of the Parties accept market entrance for products that do not meet animal welfare standards

² The WTO Appellate Body upheld the Panel's finding that the EU Seal Regime was "necessary to protect public morals" within the meaning of GATT Art. XX(a). https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds400sum_e.pdf

imposed on domestic producers. Compliance with EU animal welfare standards should be a requirement for placing Australian animal agricultural products on the EU market.

2.1.3. Cooperation and exchange of expertise

The 2008 EU-Australia Partnership Framework – a precursor to the present FTA negotiations – established an EU–Australia Animal Welfare Cooperation Forum.³ However, the EU-Australia FTA should also seek to include provisions seeking cooperation and the exchange of expertise between the Parties on animal welfare matters. This should also include collaboration in the framework of the World Organisation for Animal Health (OIE) and other international fora to develop animal welfare standards globally.

2.1.4. Placement of animal welfare provisions

Provisions pertaining to animal welfare may be included in the agreement’s SPS chapter, as the EU has done in past FTAs. However, placement in the SPS chapter also has its limitations, because it may restrict their applicability to animal welfare issues that directly also relate to animal health. This is one of the reasons why thus far animal welfare provisions in EU trade agreements have been effectively restricted to slaughter. Animal welfare provisions may also be placed in a Regulatory Cooperation chapter, in a standalone animal welfare chapter, or – as is argued – below, there is also a case for their inclusion in the chapter on Trade and Sustainable Development given the inextricable link between intensive farm animal production and environmental harm.

2.2. Wildlife and environmental protection: Trade and Sustainable Development

Both the EU and Australia have taken a leadership role internationally on sustainable development issues through progressive policies taken in their most recent trade agreements. The existing 2008 EU-Australia Partnership Framework also commits to cooperation on biodiversity conservation, including the protection of endangered species, whale conservation and the creation of marine protected areas on the high seas.⁴ Nonetheless, HSI believes that the Trade and Sustainable Development (TSD) chapter in the EU-Australia FTA should be even more ambitious in both its scope and level of commitment.

2.2.1. Mandatory vs precatory language

While TSD chapters often address vital environmental concerns, the effectiveness of the commitments made by the parties is sometimes diminished by the use of mere precatory language (i.e., “strive to ensure,” “strive to improve,” “make best efforts”). We therefore urge that stronger language like “shall ensure” and “shall implement” be used with regard to mandatory environmental commitments in the EU-Australia FTA.

2.2.2. Multilateral Environmental Agreements

The recognition of the importance of Multilateral Environmental Agreements (MEAs) and the requirement that each Party effectively implements those to which it is a party should be included in the Agreement. However, the MEAs to which the EU and Australia belong should be explicitly enumerated and should explicitly encourage the parties thereto to join any MEAs to which they do not yet belong.

³ https://eeas.europa.eu/sites/eeas/files/partnership_framework2009eu_en.pdf

⁴ Ibid

2.2.3. Binding commitments to protect wildlife

Although promising steps have been taken in past FTAs (see section 3.1), particularly with respect to CITES implementation, wildlife trafficking, demand reduction efforts, and cooperation between parties, HSI urges that the following binding commitments be included in the wildlife protection sections of the EU-Australia TSD chapter:

- a) Language calling for enforcement of the obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) does not cover all illegal wildlife trade. Many threatened species are protected from exploitation in their home countries but are not protected from being traded, either through domestic legislation or by CITES, and such domestic protections are often poorly enforced. In addition, many demand-focused countries have no protections for non-native species. As a result, wildlife traffickers are able to easily smuggle these animals into legal (or illegal) international trade flows, and once out of their countries of origin, little can be done to stop the trade in these species. To address this devastating practice, it is imperative that the Parties commit to adopting laws that prohibit the importation, transshipment, purchase, and sale of wildlife taken illegally in the country of harvest/origin.⁵
- b) The EU-Australia FTA must include strong commitments requiring each Party to protect its own domestic wildlife and wildlife habitats. Wildlife is sourced throughout the world, and if taken from the wild, such removal can be at unsustainable levels leading to serious declines in the population of that species. Population decline of any species has numerous negative consequences for the ecosystem. Additionally, captive breeding or ranching facilities often become a place through which wild-caught animals can be laundered.⁶ This may go unnoticed and those animals or their products can then enter legal trade. Animals that are in trade, whether wild-caught or captive-bred or ranched, also regularly experience physical injury, pain, distress, fear, and other forms of suffering⁷ throughout the trade chain: at the stage of capture, housing, transport, slaughter, etc. The protection of habitats is equally important, for the disappearance of habitats is the one of the leading causes of population declines in endangered and threatened species.
- c) In today's globalised world, "international trade chains accelerate habitat degradation far removed from the place of consumption."⁸ Roughly 30% of threats to the survival of species are due to international trade, and "consumers in developed countries cause threats to species through their demand of commodities that are ultimately produced in developing countries."⁹ The EU is one of the top three destinations for "biodiversity implicated

⁵ In the U.S., the law providing law enforcement with the authority to prosecute cases of illegally taken wildlife is the Lacey Act, 16 U.S.C. §§ 3371-3378. <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

⁶ Wild-caught specimens, particularly reptiles and birds, are known to be routinely laundered into the legal trade and sold as 'captive-bred'. For example, a report from the International Trade Centre explains that wild caught snake skins are often laundered through alleged captive breeding facilities or mixed in with captive bred specimens where stockpiles are kept, thus disguising the true source of the capture. See Kasterine, A., Arbeid, R., Caillabet, O. and Natusch, D. *The Trade in South-East Asian Python Skins*. International Trade Centre (ITC), Geneva, (2012), available at <http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/The%20Trade%20in%20Southeast%20Asian%20Python%20Skins%20for%20web.pdf>. (ITC Report) (last visited Sep 2, 2014).

⁷ There are significant concerns about the welfare of wild animals either being caught in the wild or raised and captive-bred killed for their parts and products, or traded live. Methods used to capture and kill wild animals whose parts are destined for the trade, particularly when this is done on a large scale, as are many commercial operations, are often inherently inhumane. Animals can be poisoned, trapped or snared, or bludgeoned to death. Their parts are sometimes removed even before they are dead. In Vietnam and Indonesia, for example, where much of the python skin imported to the EU originates, inhumane methods, such as decapitation and asphyxiation of live pythons using air compressors or water pumps, are commonly used to slaughter snakes for snakeskin. Whether a snake actually dies from during these practices prior to skin removal is not clear. See ITC Report.

⁸ Lenzen, M., Moran, D. et al. *International trade drives biodiversity threats in developing nations* *Trade Drives Biodiversity Threats in Developing Nations*, Nature, Vol 486, (Jun 7 2012), <http://www.stapgef.org/stap/wp-content/uploads/2013/10/International-Trade-and-Biodiversity-Threats.pdf> (Lenzen) (last visited Sep 2, 2014).

⁹ Id.

commodities”¹⁰ and “there is no practical difference in terms of imperilment between trading specimens and trading commodities whose production leads to their imperilment.”¹¹ Thus, we believe that the EU-Australia FTA must include commitments in its TSD chapter to take steps to discourage the consumption of certain goods and products, which are unsustainably harvested or manufactured in export-intensive industries, such as unsustainable palm oil plantations in Indonesia and Malaysia^{12,13}. At the same time, the Parties should promote the production and consumption of sustainably harvested and manufactured goods and products, especially those in export-intensive industries.

2.2.4. Sustainable fisheries management

HSI believes the EU and Australia should make strong commitments to sustainable fisheries management, particularly in the areas outlined in the sections below.

2.2.4.1. IUU fishing

IUU fishing can devastate local fish stocks and destroy sensitive, productive marine ecosystems through the use of harmful fishing gear and practices. The FAO and UN Environment have linked IUU fishing to high rates of abandoned, lost, or otherwise discarded fishing gear, which is known to not only be detrimental to healthy marine habitat, negatively impacting fish stocks and wildlife, but also to safety and livelihoods of the fishing community.

Several international agreements exist that tackle IUU fishing, including the FAO International Plan to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing,¹⁴ and the FAO Agreement on Port State measures to Prevent, Deter, and Eliminate Illegal, Unreported Fishing (Port State Measures Agreement).¹⁵

While both the EU and Australia have included commitments to IUU fishing in some FTAs, these must be more detailed and specifically-targeted toward the realities of IUU fishing. Requiring “measures to combat IUU fishing”¹⁶ is insufficiently detailed; HSI suggests that the EU-Australia FTA require such measures to be aimed at preventing vessels flying a party’s flag and its nationals from engaging in IUU fishing activities.

Likewise, “policies and measures to exclude IUU products from trade flows”¹⁷ does not mention the most promising deterrent: a seafood traceability scheme throughout the supply chain with particular focus on imports. In addition, the EU-Australia FTA should include a commitment to ending the trade and transshipment at sea of products of IUU fishing. Finally, merely acting consistently with the Port State Measures Agreement is insufficient, given the importance of the IUU fishing issue; the agreement should require parties to implement, and enforce the Port State Measures Agreement.

¹⁰ Id.

¹¹ Id. at 111.

¹² Koh, L. P. & Wilcove, D. S. *Cashing in Palm Oil for Conservation*. Nature 448, 993–994 (2007).

¹³ Excerpt from Lenzen: “Coffee, a top-ranking commodity, is threatening species in Mexico, Colombia and Indonesia. Agriculture also affects habitat in Papua New Guinea (where coffee, cocoa, palm oil and coconut growing are linked to nine critically endangered species including the northern glider, Petaurus abidi, the black-spotted cuscus, Spilococcus rufoniger, and the eastern longbeaked echidna, Zaglossus bartoni), Malaysia (the main export products are palm oil, rubber and cocoa; 135 species are affected by agriculture) and Indonesia (the main crops are rubber, coffee, cocoa and palm oil, affecting 294 species including Panthera tigris, the Sumatran serow, Capricornis sumatraensis, and Sir David’s longbeaked echidna, Zaglossus attenboroughi).” Lenzen, *supra* note3, at 110.

¹⁴ FAO, International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, <http://www.fao.org/fishery/ipoa-iuu/en> (last visited Sep 2, 2014).

¹⁵ Food and Agriculture Organization of the United Nations (FAO), Port State Measures Agreement, <http://www.fao.org/fishery/topic/166283/en> (last visited Sep 2, 2014).

¹⁶ See EU-Mexico TSD Chapter proposal. http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156822.pdf

¹⁷ Id.

2.2.4.2. Fisheries subsidies

The EU has been loath to include commitments related to fisheries subsidies in its FTAs, while Australia has made such a commitment under the terms of the CPTPP agreement (see section 4.5 below). Concerted action is needed on fisheries subsidies since these contribute to overfishing and overcapacity, with subsidies having helped produce a global fishing fleet up to 175% larger than sustainable levels.¹⁸ Therefore, HSI suggests that the EU-Australia FTA includes commitments requiring the parties to agree to:

- Prohibit subsidies that contribute to overfishing or overcapacity;
- Prohibit subsidies that negatively affect fish stocks in an overfished condition;
- Prohibit subsidies that contribute to illegal fishing, including subsidies for IUU-listed fishing vessels;
- Report fisheries subsidies, together with data concerning the fishery that the subsidies affect, including catch of fish stocks, status of fish stocks, fleet capacity, conservation and management measures in place, and total imports and exports per species.

2.2.4.3. Reducing by-catch

By-catch is a major problem in fisheries worldwide. So far, the EU has failed to do much to address by-catch in its TSD chapters; once again, Australia has committed to tackling this issue as part of CPTPP. HSI recommends that the EU-Australia FTA require the Parties to agree to:

- Implement and effectively enforce measures to reduce by-catch, such as:
 - Time-area closures or changes in fishing practices or gear to avoid catching vulnerable species;
 - Monitoring of landed and discarded catch;
 - Enforceable limits on catch including discards; and
- Make annual assessments of bycatch levels so as to set baseline values to determine whether bycatch is being reduced on an annual basis.
- Working at Regional Fisheries Management Organisations for effective and enforceable measures to reduce bycatch.

2.2.4.4. Recovering overfished stocks

Many fisheries in the world, including some in which the EU and its trading partners fish, are in an overfished condition or worse. Unless immediate measures are taken to allow such fisheries to recover, they become commercially unviable and wreak havoc on the ocean ecosystem. HSI recommends that the EU-Australia FTA requires the Parties to its FTAs to agree to:

- Immediately cease overfishing in any fishery in an overfished or worse condition;
- Establish and effectively implement rebuilding of fish stocks in any fishery in an overfished or worse condition.

¹⁸http://www.researchgate.net/profile/Yimin_Ye/publication/263154870_Rebuilding_global_fisheries_the_World_Summit_Goal_costs_and_benefits/links/543b7bdf0cf204cab1db00a6.pdf

2.2.4.5. Preventing ghost fishing

Ghost gear is “any discarded, lost, or abandoned, fishing gear in the marine environment. Ghost gear and ghost fishing result in significant economic loss both in cost of gear to fisherman and in commercial value of seafood caught in abandoned, lost, or otherwise discarded fishing gear. As ghost gear continues to fish, it contributes to overfishing. It is also detrimental to marine habitat and of course marine animals. It is linked with IUU fishing, as vessels fishing illegally are more likely to lose or abandon gear, leading to impact on fish stocks, wildlife, and livelihoods. To more robustly address the protection of marine habitat, the long-term conservation of marine species, and the further depletion of overfished stocks, HSI recommends that the EU-Australia FTA includes language specifically addressing prevention, reduction and recovery of ghost gear.

2.2.4.6. Protecting specific marine species

The EU has not previously included protections targeted at specific marine species in its prior TSD chapters, while Australia has agreed to such protections under CPTPP. HSI strongly believes that such a step is warranted for the EU-Australia, given the importance of and threats to certain species. This agreement should therefore include commitments to:

- enact and effectively enforce a prohibition on trade in shark fins and to require that each shark be landed with the fins naturally attached.
- prohibit the take for commercial purposes, and trade and transit of their products, of endangered species as well all species of sea turtles and marine mammals, including polar bears, seals, dolphins, and whales.
- to produce, share, and utilise species-specific data, including population and biological assessments, to improve management measures intended to promote the long-term conservation of sharks, sea turtles, and marine mammals.

2.2.5. Intensive farm animal production – impact on environment and animal welfare

While the issues of wildlife protection and sustainable fisheries management self-evidently fall within the scope of the environmental section of Trade and Sustainable Development chapters, HSI also advocates for the inclusion of animal welfare in the context of industrial farming this chapter too.

As discussed below in section 3, the EU has historically included animal welfare in the SPS or Regulatory Cooperation chapters. Although arguably ground-breaking, the language focuses on cooperation and fails to impose any concrete requirements on the parties thereto. Given the extent to which most countries in the world have industrialised their animal agriculture practices over the past twenty years - and severely negatively impacted animal welfare - we believe that it is critical that action is taken through international trade policy to address the negative impacts that this industrialisation has had and continues to have on the environment, especially given the increasing amount of trade in animal products globally. In this regard, the EU-Australia FTA should include a section in its TSD chapter focusing on addressing the impacts of industrialised farming on the environment and animal welfare.

Meat, egg, and milk production are not narrowly focused on the rearing, transport, and slaughter of farm animals. The animal agriculture sector also encompasses feed grain production, which

requires substantial inputs of water,¹⁹ land,²⁰ and energy.²¹ Intensive farm animal production is a leading driver of land degradation.²² Overgrazing has contributed to the degradation of approximately 20% of the world's pastures and rangelands, including almost three-fourths of rangelands in dry areas, through compaction and erosion.²³ As it expands to new areas, feed-crop production also plays a significant role in land degradation.²⁴ Animal agriculture is a leading player in deforestation, a well-known form of land degradation, which has a profound impact on our ability to sustain vital agricultural resources and produce food and is a contributor to climate change.

Intensive farm animal production also contributes to water scarcity in numerous ways. Farm animals first require water for hydration, but an increasing amount is needed - particularly at industrial operations - to clean enclosures (e.g. cages, stalls, pens) and sheds, to dispose of waste, and for cooling animals.²⁵ Processing animal products also requires large volumes of water and can result in significant amounts of wastewater.²⁶ Growing animal feed also involves significant amounts of water.²⁷

Not only are water supplies shrinking, the farm animal sector is increasingly polluting the available water. According to the FAO, "The livestock sector...is probably the largest sectoral source of water pollution, contributing to eutrophication, 'dead' zones in coastal areas, degradation of coral reefs, human health problems, emergence of antibiotic resistance and many others."²⁸ Intensive farm animal production, in particular, is a key culprit in the degradation of water supplies. Traditional farming systems combine animal agriculture with crop agriculture, thereby balancing the number of animals with the crops' ability to absorb the animals' manure. At Intensive farm animal production facilities, where tens of thousands of animals are confined indoors, the amount of manure typically exceeds the ability of the surrounding land to absorb it. When this happens, it can contaminate water supplies and emit harmful gases into the atmosphere,²⁹ such as nitrogen and phosphorus, which lead to eutrophication and soil acidification,³⁰ which in turn compromise other water uses such as drinking water and fisheries.³¹

Intensive farm animal production is also a significant contributor to the production of three most important greenhouse gases (GHGs) influenced by human activity,³² and, as farm animals' numbers grow, their emissions are also likely to grow, even assuming "efficient" growth. Based on expected demand, farm animal production alone is projected to emit over two-thirds of the amount of GHGs considered safe by 2050.³³

¹⁹ Steinfeld H, Gerber P, Wassenaar T, Castel V, Rosales M, and de Haan C. 2006. *Livestock's long shadow: environmental issues and options*. FAO, p. xxii (Steinfeld)

²⁰ Id. at xxi.

²¹ Id. at 84.

²² Id. at xxiii.

²³ Id. at xxi.

²⁴ Id. at 48.

²⁵ Steinfeld at 128-129.

²⁶ Id. at 130.

²⁷ Rosegrant MW, Ringler C, Zhu T. 2009. Water for Agriculture: maintaining food security under growing scarcity. *Annual Review of Environment and Resources* 34:205-222. p. 207 (Rosegrant).

²⁸ Id. at xxii.

²⁹ U.S. Department of Agriculture Economic Research Service. 2007. *Environmental interactions with agricultural production: animal agriculture and the environment*. Pg. 2

³⁰ Steinfeld at 72; Sharples, AN, Daniel T, Sims T, Lemunyon J, Stevens R, Parry R. 2003. *Agricultural Phosphorus and Eutrophication*, 2nd ed. U.S. Department of Agriculture, Agricultural Research Service, ARS-149. p.ii.

³¹ Sharples at 1.

³² Steinfeld at 82; Forster P, Ramaswamy V, Artaxo P, et al. 2007. Changes in atmospheric constituents and in radiative forcing. In: Solomon S, Qin D, Manning M, et al (eds.), *Climate change 2007: the physical science basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press, p. 135-136, FAQ 2.1).

³³ Pelletier N and Tyedmers P. 2010. Forecasting potential global environmental costs of livestock production 2000-2050. *Proceedings of the National Academy of Sciences of the United States of America* 107(43):18371-18374.

Finally, intensive farm animal production also severely jeopardises farm animal welfare. The industrial facilities responsible for the environmental impacts discussed in this section also concentrate tens of thousands (or often even hundreds of thousands)³⁴ of farmed animals along with their waste, frequently in welfare-depriving cages, crates, and pens. As discussed below in section 6, the EU has eradicated some of the most egregious confinement systems for laying hens and pigs, while Australia is lagging behind particularly with respect to chicken welfare.

In order to address the negative environmental and animal welfare impacts of industrialised animal agriculture, the EU-Australia TSD chapter should also include commitments to:

- phase-out animal agriculture practices, which contribute to environmental degradation and introduce more sustainable practices;
- phase-out intensive animal production methods that lead to poor welfare outcomes, such as battery cages, individual sow stalls and farrowing crates;
- cooperate and exchange information on best animal agriculture practices, which limit environmental impact and promote animal welfare; and
- promote trade in environmentally responsible animal agriculture products and products, which limit negative impacts on the environment and promote animal welfare.

2.3. Alternatives to animal testing

It is estimated that each year in Australia more than 6-7 million animals are used for scientific purposes^{35,36}. In the European Union, 11.5 million animals were used in 2011 according to the latest European Commission report³⁷, representing a reduction of over half a million since the previous figures were collected in 2008.

The majority of these animals are used for biomedical research, including the development of pharmaceutical and veterinary medicines. In addition, products such as pesticides, pharmaceuticals and their chemical ingredients must undergo safety testing and assessment, a process, which continues to rely heavily on the use of animals.

HSI's overarching objective is to ensure application of the 3Rs (replacement, reduction and refinement of animal use) in both research and testing, which is compulsory in the EU, by virtue of Directive 2010/63/EU on the protection of animals used for scientific purposes, and in Australia through state and territory adoption of the *Australian code for the care and use of animals for scientific purposes*.

In recent years, rapid progress has been witnessed in the development of new techniques for safety science that rely on *in vitro* and computational methods rather than animal experiments. These new techniques can offer faster, cheaper and more relevant data with which to assess the safety and efficacy of the many thousands of chemicals in commerce today.

³⁴ International Finance Corporation. Muyuan Pig, A Summary Report. <http://www.ifc.org/ifcext/spiwebsite1.nsf/0/8899E791D7917B65852577190056DBC6> (last visited Sep 11, 2011); Nasa N. 2011. Starving hens now an offence. Down to Earth, July 21. <http://downtoearth.org.in/content/starving-hens-now-offence> (last visited Sep 11, 2011); The Humane Society of the United States. 2010. New investigations by The HSUS reveal appalling animal abuse at four egg factory farms. Press release issued April 7. http://www.humanesociety.org/news/press_releases/2010/04/egg_industry_investigation_040710.html (last visited Jul 29, 2011).

³⁵ <http://www.humaneresearch.org.au/statistics/>

³⁶ Comprehensive national figures are not available as statistics on the use of animal use in research and teaching are collected (and in some cases publicly reported) by each state and territory jurisdiction individually rather than collectively at Commonwealth level. Reporting criteria and standards vary between jurisdictions.

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52013DC0859>

There are significant regulatory differences between the EU and Australia with respect to safety data requirements and animal testing (see Annex 3). These differences can make it necessary for companies to conduct duplicative testing, entailing unnecessary cost, delay, and animal suffering. If the goal of this trade agreement is to increase market access for products, the divergence in product testing requirements between the Parties and different approaches to animal testing and its alternatives will need to be adequately addressed in these negotiations. These FTA negotiations offer an important opportunity to identify where both EU and Australian regulations can be adapted to incorporate up to date scientific knowledge; and that this will form the strongest basis for future cooperation.

HSI believes that there are opportunities for aligning regulatory approaches and ensuring that each approach is based on up to date science, overall allowing for avoidance of duplication, reductions in animal use and cost to business, while at the same time providing equivalent or better protection of human health and the environment. Our suggestions below cover some core principles, and also recommendations for particular sectors where there is room for concrete, near term progress.

2.3.1. Core principles

HSI advocates the rigorous application of the '3Rs' approach. As well as raising welfare standards, applying the 3Rs will aid the integration into regulatory practice of alternative testing methods, supporting the modernisation of safety science as touched on above.

The application of the 3Rs is compulsory in the EU, by virtue of Directive 2010/63/EU on the protection of animals used for scientific purposes. Due to the regulation of animal welfare in Australia by state and territory jurisdictions rather than at the federal level, the 3Rs principles included within the non-statutory *Australian code for the care and use of animals for scientific purposes* ('the Code') must be adopted into each jurisdiction's respective animal welfare legislation in order to be enforced. Although every state and territory has adopted the latest edition of the Code, differences in animal welfare legislation and Codes of Practice lead to divergences in welfare standards between jurisdictions. Overall, achieving a consensus on explicitly applying the 3Rs approach will help align practices, and create a common framework for supporting the introduction of progressive testing methods.

Directive 2010/63/EU on the protection of animals used for scientific purposes represents the most advanced legislation of its kind in the world, and highlights the need for a review of Australian legislation and the Code in order to ensure that modern standards of animal protection are applied. The EU Directive sets up mechanisms for improved transparency and implementation of the 3Rs through measures such as the publication of non-technical project summaries, and retrospective assessments of projects, including actual severity of procedures and reporting on the application of 3Rs. The EU-Australia FTA negotiations present a timely opportunity for Australia to signal willingness to review differences and to consider the adoption of modern welfare approaches in line with EU standards.

Following a similar theme, the EU-Australia FTA should aim to ensure that legislation, regulations and relevant guidance on both sides is up to date with alternative methods, and contains mechanisms allowing for timely adaptation to incorporate new methods as they are validated. The European Commission has noted the importance of cooperation in the development of assessment methodologies and in fostering the implementation of alternatives, in the context of its positions on chemicals and cosmetics, but in fact this objective is of key importance across product sectors. Coordinated funding for the planning and implementation of research programmes delivering new methodologies is another important aspect.

International cooperation on data sharing is critical to avoiding repeat testing and reducing animal use. The EU-Australia FTA discussions should explore possibilities for facilitating the exchange of data from toxicity studies, clinical and pre-clinical assessments, including mechanisms for dealing with confidential business information and protecting intellectual property. This is especially relevant in the context of industrial chemicals regulation.

The EU-Australia FTA negotiations also provide an opportunity for Australia to explore ways in which it could facilitate the application of the 3Rs through adoption of annual reporting requirements in line with the EU Directive, including the collation of animal use statistics across member state jurisdictions and subsequent public reporting of statistical data on the use of animals for scientific purposes at EU level. Harmonisation with the EU requirements could be reflected in Australia through adoption of a requirement for consistency in reporting requirements and information format across state and territory jurisdictions in order to facilitate the collation and publishing of annual national statistics of animals used in research and teaching in Australia.

2.3.2. Sector-specific opportunities

Humane Society International believes that the following sector specific issues should be addressed in the EU-Australia FTA with a view to regulatory alignment of 3R best practices:

2.3.2.1. Cosmetics

EU Regulation 1223/2009 bans animal testing for cosmetics within the EU, as well as the sale within Europe of beauty products subjected to new animal testing for cosmetic purposes after 11th March 2013. Humane Society International strongly believes that animal testing for the purpose of developing new cosmetics should be eliminated.

The level of suffering caused to animals in this context cannot be justified, particularly in view of the fact that thousands of existing cosmetic ingredients can be reformulated to create new products without the need for animal testing. This form of safe innovation without animal suffering is now standard in the EU and we would like to see Australian regulators move in the same direction.

In 2017 the Australian Government announced it would 'ban the use of new data on cosmetic ingredients, which are derived from animal tests from 1 July 2019', following a 2016 election commitment. Consequently, the *Industrial Chemicals Bill 2017* was introduced to Parliament and is now pending, alongside proposed draft regulations. Together the pending legislation and regulation would create a framework for prohibiting the use of animal test data "if an industrial chemical is to be introduced for an end use *solely* in cosmetics" (*emphasis supplied*). The proposed ban provisions, as currently drafted, would therefore not completely ban the use of new data on cosmetic ingredients, which are derived from animal tests. Cosmetic ingredients with other specified end uses would be exempt from the prohibition as new animal test data would be allowed for cosmetic end uses that are part of multi-end use introductions.

The Australian Department of Health, responsible for implementation of the ban, has expressed its desire to align Australian regulations as much as possible with that of major trading partners, such as the European Union. However, the proposed wording for the Australian regulation would allow the submission of new animal test data for the purposes of safety substantiation of cosmetics, which is prohibited under EU regulation.

Amendments to the bill have been tabled in the Senate and discussions between the Department and HSI are currently underway in relation to the inclusion of additional provisions in order to

ensure new animal test data would be prohibited for all cosmetic end uses, including those part of multi-use chemical introductions.

The EU-Australia FTA negotiations provide an opportunity to ensure that the proposed Australian ban is better aligned with EU Regulations and international best practice through amendments being made that would ban new animal-test data for any and all chemical introductions for a cosmetic end use, regardless of whether the chemical is also being introduced for other uses, while still allowing animal test data for non-cosmetic uses.

2.3.2.2. Pesticides

EU data requirements for biocides and plant protection products were revised via Regulations 528/2012, 283/2013 and 284/2013 to significantly reduce testing on animals. In the best-case scenario, these amendments could cut animal testing required by EU authorities by as much as 40%, with substantial cost savings as well. Previously, upwards of 10,000 dogs, rabbits, rodents, fish, birds and other animals were required to satisfy EU regulatory requirements for a single pesticide active ingredient, in tests involving substantial redundancies (for example, using multiple routes of exposure – oral, dermal and inhalation – and more than one species, for both ingredients and finished products). The updated regulations introduced state of the art testing methods and strategies to reduce these redundancies, while maintaining a high level of regulatory rigour to protect human health and the environment.

In the interests of minimising redundant testing and preventing undue costs, market access delays and animal use, efforts should be made by Australia to ensure its pesticide data requirements are updated to bring them into line with 3R best practices currently in place in the EU. Given that scientific developments continue to progress, and indeed have done even since the EU amendments were adopted, it is imperative that both jurisdictions actively explore mechanisms for the timely updating of data requirements when novel non- or reduced animal testing methods become validated through which equivalent information can be provided.

2.3.2.3. Chemicals

EU Regulation 1907/2006 ('REACH') contains numerous measures designed to supply essential safety data on industrial chemicals while minimising new animal testing. It contains provisions requiring that animal tests be used only as a last resort, and that alternative methods be used whenever possible, plus a mechanism by which its data requirements must be updated when tests which would reduce, replace or refine animal use become available. Since REACH was adopted, scientific advances have indeed rendered some of its animal test requirements obsolete, and the EU Commission is currently taking forward amendments introducing updated test methods and strategies.

Both EU and Australian chemicals regulations must, over time, apply the most modern approaches and testing strategies to reduce animal use. The EU-Australia FTA, together with pending reform of the *National Industrial Chemicals Notification and Assessment Scheme* ('NICNAS') in Australia, presents a timely opportunity to review how the new Australian Industrial Chemicals Introduction Scheme (AICIS) could be adapted to incorporate mechanisms for minimising animal testing similar to REACH. Efforts already being made to reduce reliance on animal test data under the proposed scheme (such as greater acceptance of data from analogues and non-animal test methods) should be further explored and expanded upon through greater harmonisation with REACH mechanisms, including incorporating a mandate to use available alternative test methods and strategies, explicit reference to the implementation of 3Rs principles, and a prescriptive 'last resort' requirement into proposed legislation and/or regulation, as well as obligatory data sharing between companies, opportunities to adapt or waive

standard data requirements under certain circumstances, and an obligation to update data requirements with new testing methods where applicable.

Toxicity data brought forward under REACH (and other national regimes) are relevant both for chemical regulatory purposes in Australia as well as for use in toxicological research efforts and interagency collaboration. In line with proposed NICNAS reform measures that would allow greater use of international assessment materials, further opportunities for sharing of data between REACH and NICNAS/AICIS must be explored. For example, data generated for REACH should be available to satisfy Australian regulatory requirements; conversely, NICNAS data and interpretation mechanisms should be available to EU regulators to guide dossier review and test plans. The negotiations should in particular contribute towards further work to address the fact that information produced for one regulatory programme cannot currently be easily used in another, due to issues of access to data, cost sharing, and differences in the way information requirements are structured (for example, whether study summaries or entire study results must be submitted).

2.3.2.4. Vaccine batch testing – keeping up with vaccine alternatives

EU regulations are the state of the art with regards the adoption of alternative methods for human and veterinary vaccines' batch release testing³⁸ and EU regulators provide support³⁹ to the manufacturers interested in making the transition from *in vivo* to *in vitro* testing.

In addition, EU vaccine regulators have pioneered a novel safety assessment strategy known as the consistency approach, based upon thorough characterisation of the vaccine during development such that the quality of subsequent batches is the consequence of the strict application of a quality system and of a consistent production of batches.

The concept of consistency of production is state of the art for new-generation vaccines, where batch release is mainly based on non-animal methods. There is now the opportunity to introduce the approach into established vaccine production, where it has the potential to replace *in vivo* tests with non-animal tests designed to demonstrate batch quality while maintaining the highest quality standards⁴⁰.

2.3.2.5. Pharmaceuticals and veterinary medicinal products

Substantial progress toward minimisation of animal testing has been achieved through the *International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use* (ICH) and *International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products* (VICH); however, country-specific blocks remain to the use of certain animal reduction testing strategies and these should be addressed and overcome.

The EU-Australia FTA negotiations provide the opportunity to enable further alignment of Australian Guidelines with technical data requirements set out in relevant EU, ICH, and VICH Guidelines, and to explore ways in which the both the TGA and APVMA could collaborate with the EMA in order to further facilitate the adoption of Guidelines that implement best practice with regard to the 3Rs in regulatory testing. Further harmonisation of requirements for data could

³⁸ Replacement, Reduction, Refinement. Animal welfare progress in European Pharmacopoeia monographs: activities of the European Pharmacopoeia Commission from 2007 to 2017. Lang et al., *Pharmeuropa Bio&SN*, May 2018

³⁹ A list of European Medicines Agency guidelines for the application of 3Rs is available here: EMA J3RsWG - Working Group on the Application of the 3Rs in Regulatory Testing of Medicinal Products:

http://www.ema.europa.eu/ema/index.jsp?curl=pages/contacts/CVMP/people_listing_000094.jsp&mid=WC0b01ac05803a9d6d

⁴⁰ The proof of concept of that approach for established products is entrusted by a public-private consortium, called Vac2Vac. www.vac2vac.eu

contribute to reductions in the duplication of animal testing and encourage animal reduction testing strategies.

2.3.2.6. Emerging issues

Efforts should be made to better align Australian and EU approaches to screening, testing, assessment and regulation of nanomaterials, and mixtures/formulations with an eye to enhancing relevance, efficiency, and minimisation of animal testing. Again, the EU-Australia FTA discussions should examine the possibilities for improving the sharing of data generated under Australian chemicals regulatory schemes (such as risk assessments conducted by NICNAS and other agencies) with EU programmes such as REACH – considering how to overcome issues of access costs and confidentiality.

2.3.2.7. Classification and labelling of chemicals and mixtures

In 2008 the EU adopted legislation (Regulation 1272/2008) implementing the United Nations Globally Harmonised System of Classification and Labelling of Chemicals ('GHS'). More recently Australia has aligned the Work Health and Safety Regulations with the GHS. However, additional (non-GHS) hazard statements and classification criteria are being implemented in Australia, including differences in cut-off values/concentration limits that would trigger classification; and some GHS hazard classes and categories are not covered by the model WHS Regulations. Furthermore, the GHS is yet to be adopted in the Australian state/territory jurisdictions of Victoria, Western Australia, and the Australian Capital Territory.

Although classification and labelling criteria are often said to be "test method neutral," meaning that the results of any internationally accepted test could in theory be used as a basis, some authorities and companies cite divergent criteria as a reason for not utilising available 3R alternative methods. Differences in criteria could potentially lead to EU or Australian companies having to repeat animal studies to satisfy the respective jurisdictions divergent requirements.

The EU and Australian federal, state and territory agencies should work towards convergence between jurisdictions to ensure consistency in the implementation and acceptance of GHS labels and safety data sheets, and also commit to implementing the regular updates of the Globally Harmonised System.

3. Existing EU trade policy commitments

3.1. Environmental provisions

The generation of EU trade agreements, which are currently under negotiation, reflect the EU's approach to trade policy, which places a strong emphasis on values-based trade, particularly with respect to sustainable development – both in terms of labour rights and environmental protection. Previously EU trade deals, such as the Agreement between the EU and Colombia and Peru,⁴¹ have not included standalone sustainable development chapters at all, or their environmental provisions, certainly relating to wildlife, have not been gone further than the Parties making commitments to properly implement and enforce the multilateral environmental agreements to which they are both signatories.

3.1.1. EU-Vietnam

The EU-Vietnam FTA, which was concluded in 2016 but not yet ratified, was the first trade deal to move beyond this and to explicitly include language in the Trade and Sustainable Development chapter relating to the adoption and implementation of effective measures, such as awareness raising campaigns, monitoring and enforcement measures, to reduce the illegal trade in wildlife. This FTA also seeks enhanced cooperation with regard to proposing the addition of new species to the CITES appendices.⁴²

3.1.2. CETA

Another recent trade deal, the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, which provisionally entered into force in September 2017, was pretty thin on the ground with regard to environmental protection. Beyond the usual commitments to the implementation of MEAs and the commitment to combating Illegal, Unreported and Unregulated (IUU) fishing, there are no other provisions relating to wildlife protection. CITES is only referred to explicitly in the context of forestry and timber products.

3.1.3. EU-Mexico

In contrast, the agreement that has been reached in principle for the modernisation of the existing Global Agreement with Mexico, includes explicit CITES-related provisions with a view to ensuring the long-term conservation of species. The agreement also seeks cooperation - bilaterally, regionally and in international fora – on issues concerning trade and the conservation and sustainable use of biological diversity, as well as the combat of illegal wildlife trade. The latter includes initiatives to reduce demand for illegal wildlife products and specimens, promoting the inclusion of species on the CITES Appendices and to enhance law enforcement cooperation and information sharing. There are also provisions with regard to preventing the spread of invasive species and combating IUU fishing.⁴³

3.1.4. EU-Japan

The EU has finalised negotiations for an Economic Partnership Agreement with Japan. On the whole, the environmental language is weaker than for the modernised Global Agreement with Mexico and the EU-Vietnam FTA. It includes commitments for the Parties to effectively their

⁴¹ http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf

⁴² http://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154229.pdf

⁴³ http://trade.ec.europa.eu/doclib/docs/2018/april/tradoc_156822.pdf

commitments with regard to MEAs, such as CITES, as well as to conserve and sustainably managing natural resources, combat illegal trade in wildlife and IUU fishing.

3.1.5. EU FTAs under negotiation

Text proposals published by the European Commission for other proposed agreements, such as the - now indefinitely shelved - Transatlantic Trade and Investment Partnership (TTIP)⁴⁴ with the United States and the EU-Mercosur⁴⁵ deal also provide insight into the current level of ambition with regard to sustainable development chapters, particularly concerning issues such as combating wildlife trafficking and IUU fishing and also climate change.

3.2. Animal welfare provisions

Animal welfare is also a key EU value, which is enshrined in Article 13 of the Treaty on the Functioning of the European Union, and this is also reflected in the EU's trade policy aspirations. Thus far, the EU's general template is to try to include animal welfare in the Sanitary and Phytosanitary (SPS) chapters of its trade agreements with other Parties. The view held is that animal welfare is inextricably related to animal health, so this is an appropriate place for animal welfare to be included.

This view, however, is not necessarily shared by the countries with whom the EU is negotiating and limits the moral argument that animals deserve protection as sentient beings, even from practices that do not quantifiably affect their health. . As such, provisions on animal welfare do not necessarily have to be restricted to an FTA's SPS chapter, but could also be included in the Trade and Sustainable Development chapter, Regulatory Cooperation or even in a standalone chapter. The placing of animal welfare provisions is ultimately less important than the strength thereof.

3.2.1. EU-Chile

The first EU FTA to include specific animal welfare provisions was the EU-Chile FTA, which entered into force in February 2003. The SPS chapter recognises animal welfare standards as an objective and the importance of animal welfare in general. Here, animal welfare standards are defined as 'standards for the protection of animals as developed and applied by the Parties and, as appropriate, in compliance with the OIE standards and falling within the scope of this agreement'.⁴⁶

In short, the EU-Chile FTA seeks to reach a common understanding between the Parties on animal welfare and to develop animal welfare standards in relation to slaughter and stunning; the scope may be extended to other animal welfare standards later. It also includes an article on information exchange, which focuses on stunning and slaughter. For EU exports to Chile, Member States bear the responsibility of certification for both animal health and welfare. In November 2017, the Council adopted the mandate for the modernisation of this agreement. It remains to be seen whether the animal welfare provisions for this agreement will be further developed to go beyond animal welfare at slaughter, by also addressing issues such as the breeding, holding, handling and transport of animals.

3.2.2. EU-South Korea and EU-Colombia/Peru

A second agreement to include animal welfare in the SPS Chapter was the EU-South Korea FTA, which formally entered into force in December 2015, but had been provisionally applied since

⁴⁴ http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153923.pdf

⁴⁵ http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155481.pdf

⁴⁶ http://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF

July 2011. The provisions on animal welfare are less extensive than for EU-Chile. The SPS chapter aims to “enhance cooperation of the Parties on animal welfare, taking into consideration various factors such as the livestock industry conditions of the Parties.” This cooperation is defined as the exchange of information, expertise and experience in the field of animal welfare, which includes the adoption of a working plan. Secondly, it also includes cooperation in the development of animal welfare standards in international fora, particularly with respect to slaughter and stunning.⁴⁷ The EU-Colombia/Peru FTA also includes provisions relating to cooperation on animal welfare in the context of the agreement’s SPS chapter.⁴⁸

3.2.3. CETA

In its negotiations with Canada for the Comprehensive Economic and Trade Agreement (CETA), the EU failed to get animal welfare included in its SPS chapter. Instead animal welfare was relegated to an article in a chapter on Regulatory Cooperation. The provision simply committed to “exchanging information, expertise and experiences in the field of animal welfare to promote collaboration on animal welfare between the Parties”.⁴⁹

3.2.4. Past TTIP ambitions

The level of ambition for future trade agreements has been much higher. For TTIP, this included text proposals with respect to the recognition of animal sentience, as well as (international) cooperation and information exchange. Crucially, the text proposals for a TTIP SPS chapter sought to move beyond slaughter and stunning, by also aiming to align regulatory standards relating to the breeding, holding, handling and transport of animals.⁵⁰ There was massive resistance to these proposals from the US, so it is unclear what the eventual outcome would be had the deal not been shelved by the Trump administration.

3.2.5. EU-Mexico

Animal welfare will also be included in the modernised EU-Mexico Global Agreement. An agreement in principle was reached in this trade deal in April 2018. This included uniquely a new standalone chapter for animal welfare and anti-microbial resistance. The objective thereof was to provide a “framework for dialogue and cooperation with a view to enhancing the protection and welfare of animals and reaching a common understanding concerning animal welfare standards”. For the first time, an EU trade agreement recognises animal sentience. Parties also pledge to try to improve the implementation of OIE animal welfare standards “while respecting their right to determine the level of their science-based measures”. Finally, commitments to cooperation on animal welfare in international fora and increased research cooperation are also made.

3.2.6. EU-Japan

The EU-Japan Economic Partnership Agreement only refers to animal welfare in the chapter concerning regulatory cooperation. It states that the “Parties will cooperate for their mutual benefit on matters of animal welfare with a focus on farmed animals with a view to improving the mutual understanding of their respective laws and regulations”. A commitment to the establishment of an Animal Welfare Technical Working Group for the exchange of information and expertise is also made with a view to potential further cooperation in the field.⁵¹

⁴⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN>

⁴⁸ http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf

⁴⁹ <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>

⁵⁰ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

⁵¹ http://trade.ec.europa.eu/doclib/docs/2018/august/tradoc_157228.pdf#page=475 p. 482

3.3. Animal testing

There has been extremely limited reference to the issue of animal testing in EU FTAs thus far. This has been restricted to the issue of data protection, rather than advocating for alternatives to animal testing.

3.3.1. EU-Colombia/Peru

The EU-Colombia/Peru FTA makes reference to animal testing in the context of data protection with respect to agricultural chemical products. It states that the “Parties may provide procedures which make it possible to remit or refer to the undisclosed information on safety and efficacy related to tests and studies that involve vertebrate animals.”⁵² No reference, however, is made to avoiding duplication of tests or use of animal alternatives.

3.3.2. CETA

The Comprehensive Economic and Trade Agreement (CETA) includes language with regard to animal testing in an article concerning the protection of data related to plant protection products (i.e. pesticides). This states that “each Party shall establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals should be encouraged to take the necessary measures to verify that those tests and studies have not already been performed or initiated.” Parties are also asked to encourage applicants and holders of authorisations “to make every effort to ensure that they share tests and studies involving vertebrate animals.”⁵³

⁵² EU-Colombia/Peru FTA Article 231 http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf p. 287

⁵³ CETA, Article 20.30 <http://data.consilium.europa.eu/doc/document/ST-10973-2016-INIT/en/pdf> p. 328

4. Existing Australian international trade policy commitments

Australia presently has ten FTAs in force, with ten countries or groups of countries; as well as four not yet in force, including TPP and CPTPP, and seven still under negotiation.⁵⁴ Amongst the ten agreements already in force, only three⁵⁵ include specific provisions with regard to environmental protection; animal welfare is not explicitly mentioned in any. There is, however, a reference to animal testing in the context of cosmetics in SAFTA, TPP and CPTPP.

4.1. AUSFTA

The first and oldest of these agreements is the Australia-United States FTA (AUSFTA), which entered into force in 2005. AUSFTA's Environment chapter includes provisions on environmental cooperation and the importance of the role of multilateral environmental agreements in protecting the environment both globally and domestically. It also includes provisions relating to the enforcement and application of environmental laws. In this regard, the 'protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas', is also explicitly included in the definition of environmental law.⁵⁶ AUSFTA also includes provisions relating to public participation.

4.2. ACLFTA

The second of the agreements is the Australia-Chile Free Trade Agreement (ACLFTA), which entered into in March 2009, includes language in its Cooperation chapter with regard to strengthening environmental protection and promoting sustainable development, but there is no explicit reference to biodiversity.⁵⁷

4.3. SAFTA

The Singapore-Australia Free Trade Agreement includes a reference to testing on animals in its sectoral annex on cosmetic products. Here it is stated that "neither Party shall require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety. A Party may, however, consider the results of animal testing to determine the safety of a cosmetic product."⁵⁸

4.4. KAFTA

Finally, the Korea-Australian (KAFTA) agreement, which entered into force in December 2014, has provisions relating to wildlife protection. KAFTA's Environment chapter includes commitments to the implementation of MEAs, the enforcement of environmental laws and cooperation on trade-related aspects of biodiversity⁵⁹; while the Cooperation chapter of this agreement includes provisions relation to cooperation on fisheries and aquaculture, including explicit references to IUU fishing, bycatch and the minimisation of adverse impacts of fishing on the marine environment.⁶⁰

⁵⁴ <http://dfat.gov.au/trade/agreements/Pages/trade-agreements.aspx>

⁵⁵ There are, however, side-letters for the Malaysia-Australia (MAFTA), which acknowledge that environmental commitments will instead be agreed in the framework of the TPP. <http://dfat.gov.au/trade/agreements/in-force/mafta/Pages/side-letter-environment-malaysia-australia.aspx>

⁵⁶ <http://dfat.gov.au/about-us/publications/trade-investment/australia-united-states-free-trade-agreement/Pages/chapter-nineteen-environment.aspx>

⁵⁷ <http://dfat.gov.au/trade/agreements/in-force/aclfta/fta-text-implementation/Pages/chapter-18-cooperation.aspx>

⁵⁸ <https://dfat.gov.au/trade/agreements/in-force/safta/official-documents/Documents/safta-5d-171201.pdf>

⁵⁹ <http://dfat.gov.au/trade/agreements/in-force/kafta/official-documents/Pages/chapter-18-environment.aspx>

⁶⁰ <http://dfat.gov.au/trade/agreements/in-force/kafta/official-documents/Pages/chapter-16-cooperation.aspx>

4.5. PAFTA

Amongst the FTAs that are not yet in force, the Peru-Australia Free Trade Agreement (PAFTA), which was signed in February 2018, will also include provisions requiring that the Parties effectively enforce their domestic environmental laws, implement the MEAS to which they are a Party⁶¹ and take measures to address climate change, protect biodiversity, and combat illegal wildlife trade.⁶² This agreement explicitly recognises “the importance of conservation and sustainable use of biological diversity, and their key role in achieving sustainable development”.

4.6. TPP and CPTPP

In terms of wildlife protection, the Trans-Pacific Partnership (TPP) is probably the most interesting and far reaching agreement - at least with respect to environmental protection - to which Australia is a signatory. After the United States withdrew from the original TPP agreement that had been finalised during the last Obama administration, the remaining eleven parties – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam - signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in March 2018.

HSI believes that CPTPP should also set the bar for the EU-Australia Free Trade Agreement's Trade and Sustainable Development chapter. CPTPP's Environment Chapter⁶³ provides a good starting point with respect to making robust commitments for the protection of wildlife and the conservation of the environment, including the marine environment. CPTPP recognises that multilateral environmental agreements are an important tool to protect the environment. Wildlife protection laws should therefore not only be implemented effectively at the national level, but also through multilateral treaties.⁶⁴

This includes provisions requiring CPTPP Parties to fulfil their obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and to commit to taking measures to combat the trade in non-CITES species, including cooperation on law enforcement. Unfortunately, a provision to combat the illegal trade in wild animals, fish and plants, which have been taken in violation of another country's laws (akin to the US Lacey Act), which had been included in the TPP agreement as negotiated with the US, has been omitted from CPTPP. However, such a provision would be highly desirable for the EU-Australia FTA.

In addition to the above, CPTPP requires that Parties also implement measures to protect endangered wildlife species in their own territories and protect the eco-systems of protected areas. In connection with biodiversity protection, the agreement also addresses the issue of managing both terrestrial and aquatic invasive alien species.

The protection of the marine environment is also high on the CPTPP agenda not just in terms of preventing pollution from shipping, but also by making specific commitments to promote the conservation of targeted species, such as sharks, marine turtles, sea birds and marine mammals, through the implementation and enforcement of, for example, measures to limit by-catch from fishing and bans on shark finning. This level of specificity is quite unique.

Further CPTPP marine commitments include requirements to improve fisheries management to prevent overfishing and the overcapacity of fleets. Parties must also make efforts to combat IUU

⁶¹ Both CITES and the Convention on Biological Diversity (CBD), as well as the United Nations Framework Convention on Climate Change, are explicitly listed in footnotes to PAFTA's Environment Chapter

<http://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/chapter-19-environment.aspx>

⁶² <http://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/pafta-outcomes/Pages/outcomes-at-a-glance.aspx>

⁶³ <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Documents/20-environment.pdf>

⁶⁴ <http://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/chapter-19-environment.aspx>

fishing, particularly through the implementation of port-state measures. Moreover, the issue of harmful fisheries subsidies is also tackled by requiring Parties to ban subsidies that negatively impact fish stocks that are overfished and to not grant subsidies to vessels that are engaged in illegal fishing.

Finally, the CPTPP agreement also seeks to create meaningful opportunities for public participation with regard to the implementation of the environmental aspects of the agreement.⁶⁵

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⁶⁵ <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/outcomes-documents/Pages/tpp-11-outcomes-environment.aspx>

⁶⁶ <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Documents/20-environment.pdf>

⁶⁷ <http://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/chapter-19-environment.aspx>

The CPTPP agreement also seeks to create meaningful opportunities for public participation with regard to the implementation of the environmental aspects of the agreement.⁶⁸

Finally, both the Annexes to the Technical Barriers to Trade Chapters of the TPP and CPTPP agreements make explicit reference to the use of animals for the testing of cosmetics. This states that “no Party shall require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety. A Party may, however, consider the results of animal testing to determine the safety of a cosmetic product.”⁶⁹

⁶⁸ <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/outcomes-documents/Pages/tpp-11-outcomes-environment.aspx>

⁶⁹ TPP Annex 8-D Cosmetics, paragraph 21 <https://www.mfat.govt.nz/assets/Trans-Pacific-Partnership/Text/8.-Technical-Barriers-to-Trade-Chapter.pdf>

5. Value and volume of trade in animal products between the EU and Australia

Australia is currently ranked as the twelfth most important destination for EU Agri-food products.⁷⁰ Meat and dairy products, such as cheese and whey, are the key animal products exported to Australia by the EU, while the EU is a significant export market for bovine meat, sheep meat, wool and hides produced in Australia.

5.1. Meat exports from Australia to EU28

In 2017, 35,370,000 kg of meat and edible meat offal valued at €284,769,917 was imported to the EU from Australia. The Netherlands was the biggest importer of Australian meat products (€136,489,195), followed by the United Kingdom (€86,154,155), Italy (€23,330,198), Germany (€15,949,596) and Belgium (€13,719,583).⁷¹ With 70% of Australian meat exports currently destined for EU27 countries and 30% to the UK, the EU will undoubtedly remain an important market for Australia post-Brexit.

Nearly half of the total meat imports from Australia to the EU consisted of beef; the vast majority of which is shipped mainly in fresh or chilled form. In 2017, a total of 16,968,000 kg of Australian beef valued at €172,906,645 was exported to the EU. Around 63% was destined for the Netherlands, 17% to the UK, 13% to Italy and the remainder to Belgium, Germany, France, Portugal, Denmark and Sweden.⁷²

Sheep meat is also one of Australia's major meat exports to the EU, largely due to the fact that the EU is far from self-sufficient with respect to the production of lamb and mutton. In 2017, a total of 15,159,000 kg of sheep meat valued at €97,904,817 was exported to the EU.⁷³ Nearly 62% of these Australian imports were destined to the UK, while around 22% of sheep meat was exported to the Netherlands, 8.5% to Germany, 5% to France and the remainder went to Belgium, Ireland, Austria and Italy.

Imports of pig meat to the EU are extremely limited with just 256,000kg being exported from Australia in 2017, the majority of which was destined for the Netherlands. Indeed, these were surpassed by imports of horsemeat from Australia as 673,000kg valued at €2,824,105 arrived in the EU, the vast majority of which was imported to Belgium and smaller quantities to France and the Netherlands. Poultry meat imports from Australia are almost negligible.⁷⁴

In addition to the above, kangaroo meat is also exported from Australia. In 2017, 1,924,000kg of kangaroo meat valued at € 8,670,090 was imported, primarily to Belgium (the largest importer), Germany, the Netherlands, France and the UK.⁷⁵ There is also a limited trade in camel meat with low levels of exports to Sweden, Belgium, the Netherlands and the UK.⁷⁶

Finally, only a limited amount of processed meat products appear to be exported from Australia to the EU, primarily to the UK and Germany. There is also a limited trade in animal fats, such as lard.

⁷⁰ https://ec.europa.eu/agriculture/sites/agriculture/files/trade-analysis/statistics/outside-eu/countries/agrifood-australia_en.pdf

⁷¹ DG Trade, Market Access Database, accessed 7th May 2018.

⁷² DG Trade, Market Access Database, accessed 7th May 2018.

⁷³ DG Trade, Market Access Database, accessed 7th May 2018.

⁷⁴ DG Trade, Market Access Database, accessed 7th May 2018.

⁷⁵ There is no specific customs code for kangaroo meat, but imports can be extrapolated from the Market Access Database using CN code '02089030 - meat of game, other than of rabbits or hares', since kangaroo is believed to be the only wild species exported for meat from Australia.

⁷⁶ DG Trade, Market Access Database, accessed 7th May 2018.

5.2. Meat exports from EU28 to Australia

In 2017, the EU exported 82,755,000kg of meat and edible offal to Australia, which was valued at € 255,241,905. Denmark was by far the biggest meat exporter (€132,339,563), followed by the Netherlands (€68,866,910), Ireland (€16,514,287), Italy (€14,972,076), Belgium (€9,778,286) and Spain (€8,613,801).⁷⁷

Beef exports from the EU to Australia are almost negligible due to the aforementioned import restrictions relating to BSE. In contrast, 68,671,000kg of pig meat valued at €206,556,166 was exported there from the EU in 2017.⁷⁸ Denmark, which meets strict import requirements with regard to uncooked, de-boned pig meat, is responsible for around 63% of pig meat exports to Australia. The Netherlands has the second largest market share (23%), followed by Ireland (7.7%) and Belgium (4.8%).

Exports of sheep and goat meat from the EU to Australia are extremely limited, as are poultry exports, the latter due to import restrictions. No horsemeat is exported from the EU to Australia. Processed meats, such as sausages, are also exported to Australia, particularly from the Netherlands and Germany.

5.3. Live animals

The trade in live animals between EU Member States and Australia mainly concerns horses for breeding purposes or equestrian sports, primarily from/to the UK and Ireland. There is also very limited trade recorded for sheep, in addition to species, such as parrots, for the exotic pet trade.

5.4. Other animal products

5.4.1. Dairy products, eggs and honey

Australia is a far bigger export market for EU dairy and egg products than vice versa. A fairly limited amount of cheese, whey, milk and egg products are exported to the EU28. Australian honey exports are more significant and valued at €3,976,803 in 2017 with the Netherlands and UK as the main recipients thereof, although these exports are dwarfed by honey exports from the EU to Australia, which were worth €243,049,254 for the same year.⁷⁹

Cheese is a major Agri-food export product for the EU. In 2017, some 25,587,000kg of cheese worth €175,400,898 was exported to Australia; Italy, the Netherlands, France, Denmark, Greece and Cyprus were the biggest exporting countries. Whey, a by-product of cheese-making, is also a significant export product from the EU to Australia, as are milk powders. Trade in eggs between Australia and the EU, both fresh and dried or liquid, is limited.

5.4.2. Wool

Wool, particularly Merino wool, is one of the most valuable animal products which is imported from Australia to the EU. In 2017 alone, 33,212,000 kg of wool and other animal hair products valued at €264,015,715 were exported to the EU. More than 43% was destined for Italy; the Czech

⁷⁷ DG Trade, Market Access Database, accessed 7th May 2018.

⁷⁸ DG Trade, Market Access Database, accessed 7th May 2018.

⁷⁹ DG Trade, Market Access Database, accessed 7th May 2018.

Republic and Germany were the next biggest importers. Wool made up the vast majority of these imports.⁸⁰

There seems to be a far smaller export market for wool and other animal hair products from the EU. In 2017, just 853,000 kg valued at €10,689,923 were exported to Australia. Italy was the biggest exporter, followed by the UK, Belgium and Denmark.⁸¹

In connection with wool production, the EU is also an export market for wool grease, including lanolin, from Australia. Exports of these products to a value of €1,386,980 were made primarily to the UK, Germany and Belgium in 2017.⁸² Wool grease, including lanolin, is an important by-product of sheep wool production. Lanolin and its derivatives are used widely in cosmetics and skin treatment products, but can also be found in lubricants, shoe polish and other commercial products.

5.4.3. Hides, leather & fur

The EU is also a significant export market for Australian raw hides, skins and leather. The majority of these products are derived from cattle, horses and sheep, but a proportion also concerns kangaroo leather.⁸³

In 2017, total leather, skin and hide imports (not including articles made from these animal materials) were valued at € 52,600,449 (11,570,000 kg). Italy is by far the biggest market and responsible for more than 83% of all imports of these animal products. France, the UK, Germany and Portugal are also significant importers. In contrast, EU exports to Australia are more limited and were valued at only €13,122,609 in 2017 with Italy and Germany being the biggest exporters.⁸⁴

Table 1. Saltwater crocodile products imported from Australia to the EU, 2007-2015

	Importer reported quantity	Exporter reported quantity
Leather products	9,996	18,561
Skin pieces	8,192	53265 + 720 kg
Skins	208,435	95,642

Source: CITES trade database, June 2017

Crocodile products are also found among the leather products exported from Australia to the EU. In 2017 alone, prepared reptile leather to the value of €2,289,573 was imported to France and Italy to supply the fashion trade.⁸⁵ Saltwater crocodiles, which are a native species listed under CITES Appendix II, are the primary source of reptile leather goods exported from Australia. Table 1, based on data from the CITES database, provides some insight into the quantities of crocodile skins and products traded.

⁸⁰ DG Trade, Market Access Database, accessed 7th May 2018.

⁸¹ DG Trade, Market Access Database, accessed 7th May 2018.

⁸² DG Trade, Market Access Database, accessed 7th May 2018.

⁸³ There is no specific CN code for kangaroo leather, but it is thought that this is covered by CN code 4113 'Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114'. Exports listed under this code were valued at €3,115,909 in 2017. DG Trade, Market Access Database, accessed 8th May 2018.

⁸⁴ DG Trade, Market Access Database, accessed 7th May 2018.

⁸⁵ Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114. DG Trade, Market Access Database, accessed 3rd July 2018

In addition to hides and leather, furskins are also imported to the EU from Australia in significant quantities. Furskins - from, for example, kangaroos, wallabies and possums - to the value of €52,598,368 were exported to EU28 in 2017. Once again, Italy was the primary importer of these fur products, followed by France. Fewer fur products are exported from the EU to Australia. The value of exports in 2017, was €13,115,289 with Italy and Germany being the most important export countries.

5.4.4. Fish products

In 2017, the EU imported 23,797,521,000 kg of fish, crustaceans, molluscs and other aquatic invertebrates from Australia to a value of €13,005,438,995. The UK was by far the biggest importer of Australian fish products, followed by the Netherlands, Germany and France. All EU Member States, however, recorded imports.

The export value of fish, crustaceans, molluscs and other aquatic invertebrates from the EU28 to Australia in 2017 was €34,651,925,427. 5,468,488,000 kg of these products were exported to Australia with Germany, the UK, Italy, France, Belgium, Spain, Sweden, Austria and Denmark being the biggest exporters.⁸⁶

5.5. Existing trade barriers

At present, there are several restrictions with respect to the trade in animal products between EU Member States and Australia.

5.5.1. SPS measures

- **Pig meat:** Australia has a strict import regime for pig meat due to SPS measures implemented in connection with Porcine Reproductive and Respiratory Syndrome (PRRS). This includes specific requirements for the heat treatment and deboning of meat. Denmark is the only EU Member State currently permitted to export uncooked, de-boned pig meat to Australia. Heat treatment must be carried out upon arrival before products, such as ham, can be placed on the Australian market.⁸⁷
- **Poultry meat:** There are restrictions on the import of chicken meat to Australia, which relate to Infectious Bursal Disease (Gumboro Disease). The EU regards these SPS measures as unjustified.⁸⁸
- **Bovine animals and products:** Australia has placed import restrictions relating to Bovine Spongiform Encephalopathy (BSE), which the EU considers to be unjustified and cumbersome with the risk assessment process not fully aligned with OIE requirements concerning BSE, or the OIE's official status for safe commodities, such as deboned meat.⁸⁹
- **Raw milk products:** Previously French Roquefort was the only raw milk product that was permitted for export under Australia's Food Standards Code for dairy products. There are specific food safety requirements now in place, which permit the import and certification of raw milk cheeses after technical assessment to ensure equivalence and compliance with Australian legislation.⁹⁰

⁸⁶ DG Trade Market Access Database, accessed 25th May 2018.

⁸⁷ http://madb.europa.eu/madb/sps_barriers_details.htm?barrier_id=10711

⁸⁸ http://madb.europa.eu/madb/sps_barriers_details.htm?barrier_id=10722

⁸⁹ http://madb.europa.eu/madb/sps_barriers_details.htm?barrier_id=10710

⁹⁰ http://madb.europa.eu/madb/sps_barriers_details.htm?isSps=true&barrier_id=10708

5.5.2. GIs

The EU also regards Australia's legislation on Appellations of Origin and Geographic Indications (GIs) as a trade barrier, particularly with respect to meat products and cheeses that use names for products that originate in the EU, but which are produced in Australia. The usage of such European product names is viewed as potentially damaging to the reputation of EU GIs.⁹¹

5.5.3. Hormonal Growth Promoters - Ractopamine

Hormonal Growth Promoters are used in around 40% of Australian cattle.⁹² HGP's are not used in chicken, egg, dairy or lamb production.

One potential barrier to trade with the EU is the use of ractopamine in the Australian pig industry. This is a β -agonist marketed under the brand name *Paylean*, which is used as a feed additive for finishing pigs to increase weight gain, improve feed efficiency and produce leaner pig meat. Ractopamine was banned in the EU due to concerns about veterinary drug residues in meat and insufficient data upon which a MRL could be established. There are also animal welfare concerns about adverse effects of the drug in pigs with symptoms, such as an elevated heart rate⁹³, increased impulsive aggression,⁹⁴ abnormal behaviour,⁹⁵ hoof lesions⁹⁶ and difficulty walking⁹⁷ having been observed. The drug has also been "associated with an increased number of injured and lame pigs during marketing".⁹⁸

The effects of ractopamine on animals are fairly well documented, but the potential health consequences in humans are not. The one known study of the effects of ractopamine on human health involved six young men, one of which blacked out after experiencing adverse effects. The main cited symptom was rapid heart rate. Further studies are yet to be undertaken.

⁹¹ http://madb.europa.eu/madb/barriers_details.htm?isSps=false&barrier_id=10400

⁹² <http://www.foodstandards.gov.au/consumer/generalissues/hormonalgrowth/Pages/default.aspx>

⁹³ Scientific Opinion of the Panel on Additives and Products or Substances used in Animal Feed (FEEDAP) on a request from the European Commission on the safety evaluation of ractopamine. *The EFSA Journal* (2009) 1041, 1-52

⁹⁴ Poletto R, Cheng HW, Meisel RL, Richert BT, and Marchant-Forde JN. 2008. Effects of ractopamine feeding, gender and social rank on aggressiveness and monoamine concentrations in different brain areas of finishing pigs. In: Boyle L, O'Connell N, and Hanlon A (eds.), Proceedings of the 42nd Congress of the ISAE (Dublin, Ireland: International Society for Applied Ethology, p.83).

⁹⁵ Poletto R, Richert BT, and Marchant-Forde JN. 2007. Behavioral effects of "step-up" ractopamine feeding program on finishing pigs. In: Galindo F and Alvarez L (eds.), Proceedings of the 41st International Congress of the ISAE (Merida, Mexico: International Society for Applied Ethology, p. 90).

⁹⁶ Poletto R, Rostagno MH, Richert BT, and Marchant-Forde JN. 2009. Effects of a "step-up" ractopamine feeding program, gender and social rank on growth performance, hoof lesions and Enterobacteriaceae shedding in finishing pigs. *Journal of Animal Science* 87:304-13.

⁹⁷ Marchant-Forde JN, Lay Jr. DC, Pajor EA, Richert BT, and Schinckel AP. 2003. The effects of ractopamine on the behavior and physiology of finishing pigs. *Journal of Animal Science* 81:416-22.

⁹⁸ FDA. Freedom of Information Summary, Supplemental new drug application NADA 140-863 PAYLEAN 9 and PAYLEAN 45 (Ractopamine Hydrochloride) Type A Medicated Article for Finishing Swine. www.fda.gov/downloads/AnimalVeterinary/Products/.../ucm115647.pdf

6. Protecting Animal Welfare

Article 13 of the Treaty on the Functioning of the European Union establishes animal welfare as a key principle that the Union should respect in its policymaking.

“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”

The issue of animal welfare is important to citizens across the whole of the Union. Indeed, a Eurobarometer survey on Attitudes to Animals in Europe revealed that 94% of respondents believed that protecting the welfare of farm animals was important. Significantly, nine out of ten respondents believed that imported products should respect EU animal welfare standards.⁹⁹

Humane Society International maintains that it is important that animal welfare in the EU is not compromised in any way—but instead enhanced—by the trade negotiations with Australia. Indeed, we argue that the generally more advanced EU standards should be taken as a minimal starting point for negotiations.

In the EU, all farmed animals are afforded basic welfare protections under the terms of Council Directive 98/58/EC concerning the protection of animals kept for farming purposes. In addition to this, there is EU legislation that establishes the minimum standards for keeping pigs, laying hens, broilers and calves, plus legislation specifically concerning the protection of animals at the time of killing (Council Regulation (EC) No 1099/2009) and live animal transport (Council Regulation (EC) No. 1/2005).

Australia presently does not have any Federal legislation concerning Animal Welfare. Australian States have prevention of cruelty legislation that rarely contains inherent farm animal welfare provisions. A few States have incorporated national codes of practice (‘The Codes’) and Welfare Standards & Guidelines as enforceable standards, either in part or in full, however in the remaining States compliance remains non-mandatory. It is worth noting even advisory codes that are not incorporated into legislation may be relied upon as a defence in some jurisdictions.

The Codes each refer to specific types/classes of animal. These are currently being replaced by nationally agreed Australian Animal Welfare Standards and Guidelines¹⁰⁰. (Hereinafter referred to as AAWS Guidelines). Land Transport Standards and Guidelines for Livestock have been regulated in all states besides the Australian Central Territory. See Annex 1 for a detailed comparison of EU and Australian animal welfare legislation.

6.1. Live animal transports

One of the most significant animal welfare concerns for both the EU and Australia is the long-distance transport of live animals outside to third countries. While the live animal trade between EU Member States and Australia is very limited, both are responsible for live animal exports beyond their borders, and this FTA could increase such trade between the parties. This issue is an important and recurring subject of political debate in both the EU and Australia, particularly due to failure to act decisively to end these cruel live transports.

⁹⁹ <http://ec.europa.eu/COMFrontOffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/71348>

¹⁰⁰ <http://www.animalwelfarestandards.net.au/>

Australia is one of the world's biggest exporters of live sheep and cattle. Live animals are sent for slaughter primarily to the Middle East, South East Asia and North Africa. These animals suffer appalling stressful conditions during transport, primarily by sea, and are frequently inhumanely handled and slaughtered without pre-slaughter stunning. Destination countries often do not have animal welfare legislation for the protection of animals at the time of killing. Mortality during transport is also high, primarily due to overcrowding, exhaustion, heat stress and dehydration. Long-distance transport also compromises the animals' immune systems and increases susceptibility to disease.¹⁰¹

Likewise, over three million animals are exported each year from the EU to non-EU countries by road and sea. Hundreds of thousands of animals are destined for fattening and slaughter in the Russian Federation, Turkey, the Middle East, North Africa and beyond.¹⁰² Journey times can last for hundreds of hours and the welfare of these animals cannot be safeguarded once they have left EU borders, despite a 2017 ruling by the European Court of Justice, which confirmed that the EU legislation on the transport of live animals (Regulation No 1/2005) applies to the entire journey, including outside the EU.¹⁰³

HSI advocates for an end to these horrific long-distance live animal transports, which should be replaced by a carcass-only trade in frozen or chilled meat.

6.2. Pig welfare

The EU has phased-out the use of individual stalls for pregnant sows, except for the first four weeks of gestation and one week before farrowing. Such enclosures are so restrictive that pigs cannot turn around in them and this can lead to sows suffering a number of significant welfare problems, including elevated risk of urinary tract infections, weakened muscle and bone, behavioural restriction and stereotypic behaviours, such as bar-biting. The use of individual sow stalls is permitted in Australia, although the pig industry has begun a voluntary phase-out of this confinement system.¹⁰⁴

6.2.1. EU legislation on pig welfare

In addition to the prohibition of the use of individual sow stalls throughout most of the duration of pregnancy, Council Directive 2008/120/EC laying down minimum standards for the protection of pigs also prohibited the tethering of sows, banned routine tail-docking, established requirements for environmental enrichment for pigs and sought to improve the flooring surfaces on which pigs are kept. There is still significant room for improvement in this legislation and its implementation, but these minimum EU animal welfare standards should provide the starting point for negotiations between the EU and Australia on pig products.

Pigs are susceptible to heat stress because they do not have sweat glands and consequently their welfare can be significantly compromised during transport to slaughter. Regulation (EC) No 1/2005 on the protection of animals during transport and related operations is intended to prevent injury and suffering to animals and ensure that they are transported under appropriate conditions that meet their needs.

This legislation prohibits the transport of pigs less than 3 weeks old (for longer than 100 km) and sows during the last stages of gestation and during first week after giving birth. Pigs in the EU are permitted to be transported for 24 hours provided they have continuous access to water, after

¹⁰¹ <http://www.animalsaustralia.org/investigations/live-export-investigations.php>

¹⁰² <https://www.ciwf.org.uk/our-campaigns/live-animal-transport/live-exports-from-the-eu/>

¹⁰³ European Court of Justice ruling, 19th October 2017, [Case C-383/16](#)

¹⁰⁴ <http://www.aussiepigs.com/facts/sow-stalls>

which they must be unloaded, fed, watered and rested for a minimum of 24 hours at an approved control post before being allowed to be transported for another 24 hours.

6.2.2. Australian legislation on pig welfare

The States of New South Wales, Queensland, Victoria, Tasmania and South Australia have animal welfare standards that are (partially) compulsory and are based on the Model Code of Practice for the Welfare of Animals (Pigs),¹⁰⁵ which is designed to ensure that the basic needs of pigs are met. Western Australia, the Australian Central Territory and the Northern Territory only have guidelines based on the Code.

In Australia, the Code of Practice for Transport of Livestock is compulsory for the transport of pigs in Queensland.¹⁰⁶ Amongst other things, this Code of Practice determines the maximum journey time, maximum time without water and minimum rest period (“spell”) for pigs, depending on how they are categorised. Sows who are more than 14 weeks pregnant can only be transported for four hours without water and rested for 24 hours. Lactating pigs with dependent young and weaned pigs under 30kg may be transported for 12 hours without water and rested for 12 hours minimum, while for other pigs this is determined at 24 hours with a 12 hour minimum rest period.

6.3. Poultry

6.3.1. Welfare of laying hens

There are approximately 16 million layer hens in Australia, 9 million of which are still confined in small, wire enclosures known as battery cages.¹⁰⁷ Barren battery cages have been outlawed in the EU; only ‘enriched’ cages and alternative systems have been permitted since 1st January 2012. HSI advocates the use of cage-free production systems only.

Unenriched battery cages are so cramped that the hens are unable to perform many important natural behaviours, including walking, perching, dust bathing, nesting, or even fully stretching their wings. They suffer psychological stress as well as numerous physical harms, including bone weakness, feather loss, and disease associated with lack of exercise

6.3.2. EU legislation for the protection of laying hens and marketing of eggs

In view of these serious animal welfare problems, the EU adopted Council Directive 1999/74/EC, which banned and phased-out the use of barren battery cages by 1st January 2012. All enriched cages must now ensure each hen has 750 cm² of space, a nest, sufficient litter to peck and scratch, plus appropriate perch space of at least 15 cm per hen. These enriched cage systems must have feeding troughs that can be used without restriction and appropriate drinking systems. Cages must be fitted with suitable claw-shortening devices. Alternative higher animal welfare barn and free-range systems are being widely used and approximately 42% of the EU flock are cage free.

The EU also has specific legislation to allow consumers to identify the production methods used. Directive 1994/74/EC established the requirement for EU egg producers to be registered with Member State authorities and to compulsorily mark all eggs placed on the market for human consumption with a distinguishing number. These numbers should also indicate the production method. The EU’s marketing standards for eggs are set down in Regulation (EC) No 1028/2006, which has since been incorporated into the Single CMO Regulation (Council Regulation (EC) No

¹⁰⁵ <http://www.publish.csiro.au/ebook/download/pdf/5698>

¹⁰⁶ http://www5.austlii.edu.au/au/legis/qld/consol_reg/acapr2012320/sch3.html

¹⁰⁷ <https://www.rspca.org.au/layer-hen-faq>

1234/2007). This legislation establishes the rules not only for eggs intended for export to third countries, but also provides rules for imports from outside the Union. Imported eggs must be legibly marked with the ISO 3166 country code and packs containing the eggs must also bear of the country of origin as well as the farming method 'non-EC standard'.

6.3.3. Australian legislation for the protection of laying hens and egg marketing

Animal welfare in Australia is presently legislated on at the state, rather than federal, level. At present only the Australian Capital Territory's (ACT) Animal Welfare Act 1992 s9A and 9C stipulates that no battery cages may be used. The debeaking of hens is also prohibited. All other jurisdictions may rely on the Codes as a defence to breaches of animal welfare regulation, whether they are compulsory Codes or not. The transport of chickens is regulated (and enforceable) by Land Transport Standards and Guidelines for Livestock in all states besides the ACT.

An Australian Animal Welfare Standards and Guidelines for Poultry¹⁰⁸ is currently in development. Public submissions on the draft are now closed and a final version will be settled on shortly.¹⁰⁹ It is of particular concern whether these standards and guidelines will propose banning the battery cage, impose appropriate maximum stocking densities, and include other progressive requirements for laying hens or meat chickens, for the draft failed to include these sensible reforms. Another omission in the draft released for public comment included failure to provide clean water for ducks to swim, and the draft allows the continuation of selective breeding for rapid growth for turkeys which has devastating effects on their health and wellbeing¹¹⁰.

There are also concerns about the Australian definition of free-range eggs. The Australian government's recently released Information Standard for Free Range Egg¹¹¹ came into effect on 26th April 2018 applied under Australian Consumer Law¹¹². It allows a maximum outdoor stocking density for free range layer hens of 10,000 birds per hectare, while in Europe certification programmes for free range eggs, such as KAT¹¹³ in Germany and RSPCA Assured¹¹⁴ in the UK, permit a maximum of 2,500 hens per hectare.

6.4. Broilers

6.4.1. EU legislation on meat chickens

Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production in the EU aims to reduce overcrowding by introducing a maximum stocking density of 33kg/m², or 39kg/m² where stricter standards on other aspects of housing are met. It also lays down other conditions, such as lighting, litter, feeding and ventilation, to improve welfare. While this EU legislation has been the target of justified critique for failing to significantly improve the welfare of chickens in intensive systems and for ignoring the European Food Safety Authority's (EFSA) scientific recommendations, it does establish minimum legislative standards for keeping these birds.

The transport of chickens to slaughter also places the birds under additional stress. First the chickens must be caught and crated. Transport is stressful, as birds experience noise, vibration, motion, overcrowding, feed and water deprivation, social disruption, and potential temperature extremes. Birds can die en route from infectious disease, heart and circulatory disorders, and

¹⁰⁸ <http://www.animalwelfarestandards.net.au/poultry/>

¹⁰⁹ <http://www.animalwelfarestandards.net.au/poultry/poultry-public-consultation/>

¹¹⁰ http://www.hsi.org.au/assets/publications/595_submission-on-draft-australian-animal-welfare-standards-and-guid.pdf

¹¹¹ <https://www.legislation.gov.au/Details/F2017L00474>

¹¹² http://www.hsi.org.au/assets/publications/548_hsi-submission-on-draft-free-range-egg-information-standard-dece.pdf

¹¹³ https://www.eurotunnels.it/phocadownload/norme/EN_Ltf_fuer_KAT-Legebetriebe_Oktober_2013.pdf

¹¹⁴ <https://www.rspcaassured.org.uk/>

trauma experienced during catching and crating, including dislocated femurs, crushed skulls, and dislocated and broken bones. Disease and infection on the farm are thought to reduce resistance and the ability of the birds to withstand the stresses associated with live haul.

In the EU, Regulation (EC) No 1/2005 on the protection of animals during transport and related operations is also intended to extend responsibility for the welfare of animals to all those involved in their commercial transport, including those preparing the animals for shipment. Amongst other technical and administrative provisions, the legislation requires that animals must be fit for transport and be transported in conditions guaranteed not to cause them injury or unnecessary suffering. Adult birds must have access to suitable food and water available to them on all journeys longer than 12 hours.

6.4.2. Australian legislation on meat chickens

As with laying hens, the Codes form the basis for the welfare of broiler chickens in Australia. An Australian Animal Welfare Standards and Guidelines for Poultry¹¹⁵ to replace the poultry code is currently in development. Humane Society International has been disappointed that the draft AAWS for poultry does not preclude the use of cages for meat chickens, allows unnecessarily high stocking densities and does not deal with the animal welfare problems caused by the use of breeds with unnaturally high growth rates. The transport of chickens is regulated and is enforceable by the Land Transport Standards and Guidelines for Livestock in all states besides the Australian Capital Territory.

6.5. Cattle

Beef cattle in the EU are primarily reared on a grass and forage-based diet. In Member States, such as the UK, Ireland and France, grazing and grass finishing of cattle is prevalent, whereas Scandinavia primarily feeds cattle on harvested forages. In Central and Southern Europe, where grain yields are higher, cattle tend to feed on less grass and forage and more grain.

From an animal welfare perspective, beef cattle reared and finished on pasture benefit in terms of health and well-being and have the opportunity to express natural behaviour. Cattle are adapted to a life spent grazing on pasture, which provides them with an appropriate diet for their ruminant digestive system. Beef cattle on pasture also have more opportunities for natural behaviour, such as grazing, walking, choosing different areas for lying and social interactions.

Beef production is a highly subsidised activity in the European Union, with payments offered to livestock producers providing incentives to follow EU environmental and animal welfare principles. CAP subsidies are intended to reduce dependence on imported food, encourage the sustainable production of agricultural goods and strengthen the economies of rural areas. Today, about two-thirds of the beef produced in the EU is from bull calves originating from the dairy industry. However, recent changes in the “decoupling” of subsidy payments for milk (i.e. subsidy payments are not linked to actual production) have translated into a contraction of milk production in the EU. This in turn has led to an increase in Europe’s ‘suckler cow’ industry, in which calves are raised exclusively for meat production.

Cows are natural ruminants and high grain rations constitute unnatural foraging diets. The European Food Safety Authority’s (EFSA) Panel on Animal Health and Welfare (AHAW) recently concluded that excessive grain feed is detrimental to the welfare of the animals and may provoke excessively rapid fermentation, accompanied by the destruction of many normal rumen bacteria,

¹¹⁵ <http://www.animalwelfarestandards.net.au/poultry/>

“with potentially extreme consequences for welfare, including abdominal pain, metabolic acidosis and, in severe cases, death.”¹¹⁶

Grain-feeding of cattle can also lead to food safety concerns. A grain diet is unnatural for the ruminant digestive system, designed to metabolise forage such as grass. Populations of the *E. coli* bacteria, which can cause severe food poisoning, have been shown to be higher in grain-fed cattle compared to those fed on forage.¹¹⁷

The welfare of dairy cattle, particularly in intensive dairy farms, can be compromised by long periods of confinement in indoor housing, health problems due to higher milk yields and distress caused by early separation from their calves. Lameness, often associated with bacterial infections that can be caused by prolonged standing on poor quality floors, inadequate nutrition and ineffective foot trimming, is a key welfare problem for dairy cows. Mastitis is another significant health problem, which is experienced more frequently by cows kept in intensive housing systems (especially with inadequate bedding or poorly designed cubicles), rather than at pasture.¹¹⁸

There are an estimated 25 million head of cattle in Australia (as at 30 June 2016, ABS Agricultural Commodities 2015-16)¹¹⁹. The majority of Australian beef cattle producers are cow-calf operators, maintaining a herd of breeding cows and a relatively small number of bulls for the production of calves for later sale. Australian cattle are predominantly raised on pasture, with some animals entering feedlots for relatively brief periods to be finished to slaughter weight on grain. Beef cattle producers have a range of options for selling cattle. Small-scale producers have a greater reliance on saleyards, particularly in southern Australia, where saleyard auctions account for almost two-thirds of beef cattle sales. Queensland is the largest processing state, contributing 43 per cent of total slaughter, followed by Victoria, New South Wales, South Australia, Western Australia and Tasmania. The Australian beef processing sector is characterised by two large firms, JBS Australia and Teys Australia, which operate multiple processing facilities across the eastern states. 70 per cent of total Australian beef production is exported¹²⁰. The feedlot sector has developed rapidly over the last two decades largely driven by strong demand growth from both domestic and export markets, particularly Japan.

In 2016-17, 2.7 million grain-fed cattle were marketed. Approximately 40% of Australia’s total beef supply is sourced from the cattle feedlot sector which comprises of around 450 accredited feedlots throughout the country¹²¹. In Australia, feedlot cattle spend around 85-90% of their lives on pasture and are generally kept on feedlots because pasture quality does not allow them to reach marketable weights during poor seasons or particular dry periods. Cattle entering a feedlot are fed a grain based ration for between 50 and 120 days on average¹²², with some long fed cattle destined for the Japanese market fed up to 650 days¹²³.

Hormone Growth Promotants (HGP) have been used for over 30 years and are an integral part of both the grain-fed and grass-fed production systems in the Australian beef industry. They are widely used with approximately 40% of Australia’s cattle herd receiving an implant during some part of their lives.¹²⁴ HGPs are used to increase production by improving feed conversion

¹¹⁶ EFSA Opinions on “Welfare of cattle kept for beef production” (SCAHAW, 2001) and Opinion on the “Welfare of cattle kept for beef production and the welfare in intensive calf farming systems” (SCAHAW, 2012) EFSA Journal 2012;10(5):2669, p.35

¹¹⁷ Callaway, T.T. et al. (2003), Forage Feeding to Reduce Pre-harvest *Escherichia coli* Populations in Cattle – a Review, *Journal of Dairy Science* 86:852–860.

¹¹⁸ <https://www.ciwf.org.uk/farm-animals/cows/dairy-cows/>

¹¹⁹ https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/fast-facts--maps/mla_beef-fast-facts-2017_final.pdf

¹²⁰ https://www.accc.gov.au/system/files/1128%20Beef%20and%20cattle%20report_D08.pdf

¹²¹ <https://futurebeef.com.au/knowledge-centre/feedlots/>

¹²² <http://www.feedlots.com.au/industry/feedlot-industry/what-happens-on-a-feedlot>

¹²³ Australian Wagyu Association, Marbling, AWA, Armidale <http://www.wagyu.org.au/marbling/>

¹²⁴ R.A. Hunter (2009) Hormonal Growth Promotant (HGP) Use in the Australian beef industry, Australian Meat and Livestock Industry Association

efficiencies in beef cattle. Studies have shown that HGP's impact meat eating quality.¹²⁵ The EU banned the use of HGP's in 1988¹²⁶ after teenage girls in an Italian town experienced an increase in breast size at a younger age than normal. Diethylstilboestrol, the hormone used, was subsequently banned in Europe and Australia^{127, 128}.

6.5.1. EU legislation for cattle

There is presently no species-specific EU legislation for either dairy or beef cattle. The provisions of Council Directive 98/58/EC apply to these species, although the permissibility of mutilations, such as tail docking, is determined by national Member States legislation. There is, however, EU legislation, which establishes minimum standards for the protection of calves. In sum, Council Directive 2008/119/EC prohibits use of confined individual pens after 8 weeks of age, it establishes minimum dimensions for keeping calves in groups and requires sufficient use of iron in rations for calves older than 2 weeks.

6.5.2. Australian legislation for cattle

In 2016, the *Australian Animal Welfare Standards and Guidelines for Cattle* were agreed by State and Territory Governments in order to create consistent animal welfare legislation, which must be regulated into law and enforced across the whole country. These standards were also intended to revise and replace the *Australian Model Code of Practice for the Welfare of Animals: Cattle*, which had previously only been legally enforceable in South Australia, in the framework of the Animal Welfare Regulations 2012, but had been voluntary elsewhere.

The Australian State and Territory governments are reported to be in the process of implementing these Cattle standards. South Australia will incorporate them into the Cattle and Sheep Standards and Guidelines came into operation on 15th April 2017, while in the Northern Territory they will be adopted under the Livestock regulations in the course of 2018 and 2019.

In New South Wales, the standards will be treated as prescribed guidelines under Section 34A of the Prevention of Cruelty to Animals Act 1979. Queensland has given notice of its intent to implement the Cattle and Sheep standards as a compulsory code requirement under the Animal Care and Protection Act 2001, but no implementation date has been given.

The standards have not been regulated in Western Australia, but an amendment of the existing Animal Welfare Act 2002 has been proposed to allow the national welfare standards to be regulated. Victoria intends to adopt the new standards in a proposed new Animal Welfare Act. The Tasmanian government is presently considering recommendations from the state Animal Welfare Advisory Committee and is likely to draft legislation in 2019. Finally, the Cattle standards are likely to be implemented in the Australian Capital Territory as a code of practice under the Animal Welfare Act 1992 by the end of 2019.¹²⁹

¹²⁵ Watson *et al* (2008) Effect of hormonal growth promotants on palatability and carcass traits of various muscles from steer and heifer carcasses from *Bos indicus*–*Bos taurus* composite cross <https://www.publish.csiro.au/EA/pdf/EA05112> *Australian Journal of Experimental Agriculture*, 2008, **48**, 1415–1424

¹²⁶ There were two hormone scandals in Italy that implicated the illegal use of Diethylstilboestrol (DES), a synthetic version of the natural hormone oestradiol-17 β in meat products, which raised consumer concerns about the use of growth hormones in European meat production and precipitated political action to ban them. One of these Italian scandals involved high doses of DES being illegally injected into the shoulders of calves bred for veal production, which resulted high levels of residues at the injection site and contamination of meat, which was then used in baby food. D. Allen, British Society of Animal Science, Hormone growth promoters in cattle. http://www.bsas.org.uk/about_the_bsas/issue_papers/hormone_growth_promoters_in_cattle/

¹²⁷ <https://farmers.org.au/news-updates/nff-news/the-use-of-hormonal-growth-promotants-09032017.html>

¹²⁸ <https://www.mla.com.au/CustomControls/PaymentGateway/ViewFile.aspx?z8F1T3glsNaMPSYP7yzmf+dz007hbyuvAbOQzKzzoLW7PH1f4FzyEtwfNMYiLOX23EYMKKAfsht7d1Tnt3BqiA==>

¹²⁹ Australian Animal Welfare Standards and Guidelines <http://www.animalwelfarestandards.net.au/cattle/>. Page updated 10th August 2018; accessed 22nd August 2018.

6.6. Sheep

Unlike most farmed species, sheep kept for meat and wool production tend to be kept outside under extensive conditions and are often only brought indoors during the winter and for lambing purposes. Dairy sheep are usually milked twice a day during a three to six month lactation period. In Europe, they may be kept almost entirely in a pasture system with only milking and lambing taking place indoors, a mixed system (i.e. pasture and indoors during entire lactation period) or in an intensive indoor system.¹³⁰

In Australia, sheep are primarily kept extensively. Extensive management systems for sheep production are the most common in all sheep producing countries, and extend from lowland farming systems where relatively small flocks graze fenced enclosures to rangeland management systems where large flocks live on unfenced pastures¹³¹. Australia is the world's largest exporter of sheepmeat, and the world's second largest producer of lamb and mutton (FAO).¹³² Prime lamb producers are predominantly located in the Riverina, the wheat-sheep zone of New South Wales, the Victorian and New South Wales Murray region and the high rainfall areas in south-west Victoria and eastern South Australia. Sheep are primarily located in south-west Western Australia, south western part of Victoria and the southern part of New South Wales¹³³.

Shedded sheep¹³⁴ are confined in individual pens indoors for the production of ultra-fine wool in Australia to supply international fashion houses¹³⁵. Fortunately the last single-penned sheep farm in Australia has closed down, but there are no laws to prevent another from starting up. It is estimated that around 5,000 sheep are still confined to sheds, living in group pens around the country. The welfare implications include lack of outdoor access or pasture for grazing. They are also unlikely to have adequate room to move to satisfy their need for exercise and express their natural behaviours. Tethering is also allowed under Australian laws and an estimated 1,250 sheep are thought to live permanently tethered around the country.¹³⁶

Key animal welfare issues affecting sheep are lameness, due to bacterial infections (i.e. scald and foot rot), painful procedures (i.e. castration and tail-docking intended for cleanliness and to reduce risk of fly-strike), and external and internal parasites. In addition, given that they are prey animals, sheep are susceptible to stress and injury due to inappropriate handling, particularly during shearing, drenching and hoof-trimming. Lamb mortality is also an animal welfare concern: outdoor lambing systems have higher rates due to dystocia and exposure/starvation, while indoor systems have a greater risk of infectious disease and abortion.¹³⁷ Intensive systems can also lead to chronic stress due to close confinement and abnormal behaviours such as 'wool-picking'.¹³⁸

6.6.1. EU legislation on sheep welfare

There is not yet any species-specific legislation laying down minimum standards for the keeping of sheep in the EU. They are, however, afforded basic protections under the terms of Council Directive 98/58/EC concerning the protection of animals kept for farming purposes.

¹³⁰ Technical report submitted to EFSA, Animal welfare risk assessment guidelines on housing and management, Wageningen UR Livestock Research, 27 August 2010 <http://www.efsa.europa.eu/en/efsajournal/doc/87e.pdf>

¹³¹ https://link.springer.com/chapter/10.1007%2F978-1-4020-8553-6_6

¹³² https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/fast-facts--maps/mla_sheep-fast-facts-2017_final.pdf

¹³³ https://www.mla.com.au/globalassets/mla-corporate/prices--markets/documents/trends--analysis/fast-facts--maps/mla_sheep-fast-facts-2017_final.pdf

¹³⁴ http://kb.rspca.org.au/What-are-the-animal-welfare-issues-with-individual-shedding-of-sheep_114.html

¹³⁵ <http://www.animalsaustralia.org/issues/sheep-cruel-confinement.php>

¹³⁶ <https://www.animalsaustralia.org/issues/sheep-cruel-confinement.php>

¹³⁷ Technical report submitted to EFSA, Animal welfare risk assessment guidelines on housing and management, Wageningen UR Livestock Research, 27 August 2010 <http://www.efsa.europa.eu/en/efsajournal/doc/87e.pdf> pp.106-7.

¹³⁸ Ibid p. 108.

Furthermore, general principles for keeping sheep have been established in the respective Recommendations concerning sheep (and goats), which were agreed by the Council of Europe in 1992 under the Convention for the Protection of Animals kept for Farming Purposes.¹³⁹ This Convention is legally binding and was signed and ratified by the European Union in 1988.

In addition, Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations establishes the provisions on journey times for sheep. In the EU, sheep may be transported for 14 hours, followed by one hour's rest to enable the animals to drink, followed by a further 14 hours travel. This sequence may be repeated after a minimum 24 hour rest period at an approved control post. Finally, Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing lays down the rules to protect the welfare of production animals at slaughter. This legislation establishes the stunning methods authorised for slaughtering sheep, plus the rules for their application.

6.6.2. Australian legislation on sheep welfare

Sheep mulesing is a serious welfare problem in the Australian wool industry. Mulesing is a surgical procedure that is designed to reduce the incidence of flystrike (myiasis), which is a condition caused by maggots living on the skin and in the fur of animals. Skin is sliced from the buttocks of lambs to scar the skin to prevent wrinkles and wool growth and keep the skin free from faecal and urine stains, which attract flies. Skin is also stripped from the sides and the end of the tail stump. Most lambs will also have their tail cut off and the males will be castrated at the same time. The pain relief used is inadequate and most often applied post cut.

Millions of merino lambs are currently mulesed each year in Australia. 75% of Australian lambs bred for wool suffer this unnecessary practice. There is, however, a genetic solution that eliminates both fly strike and the need for mulesing. Smooth bodied sheep can be bred, which do not suffer from fly strike or need mulesing.¹⁴⁰ In so doing, Australian wool producers could transform their flocks to smooth bodied sheep in as little as 3-5 years and eradicate this cruel practice. There is misinformation surrounding the genetic solution and it has not been embraced by industry leadership. Notably there is strong opposition to the practice of mulesing from the Australian sheep meat industry.¹⁴¹

Australian Standards and Guidelines for Sheep were endorsed by Australian states and territories in 2016 and allow mulesing to continue.¹⁴²

¹³⁹ Council of Europe recommendations on sheep and goats http://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20sheep%20E.asp and http://www.coe.int/t/e/legal_affairs/legal_co-operation/biological_safety_and_use_of_animals/farming/Rec%20goats%20E.asp

¹⁴⁰ <http://www.hsi.org.au/go/to/2802/sheep-welfare-and-eliminating-mulesing.html#Wc4IL49OLD4>

¹⁴¹ [https://hsi.org.au/assets/user/default/Mulesing_Under_Pressure_by_Patrick_Francis_\(May_2016\).pdf](https://hsi.org.au/assets/user/default/Mulesing_Under_Pressure_by_Patrick_Francis_(May_2016).pdf)

¹⁴² <http://www.animalwelfarestandards.net.au/files/2011/01/Sheep-Standards-and-Guidelines-for-Endorsed-Jan-2016-061017.pdf>

7. Wildlife protection issues

The final two sections of this briefing address the protection of terrestrial and marine wildlife covering issues, such as wildlife trafficking, kangaroo trade, IUU fishing, shark finning and accidental bycatch of non-target species.

7.1. Wildlife trafficking

According to a 2014 report by the United Nations Environment Programme (UNEP) trade in wildlife involves a “wide range of species including insects, reptiles, amphibians, fish and mammals” and it “concerns both live and dead specimens or products thereof”, which “are used for pharmaceutical, ornamental or traditional medicinal purposes.”¹⁴³ The global pet trade in tropical fish, primates and reptiles also benefits from illegal harvest and trade. Wildlife trafficking often involves a wide range of iconic species from “gorillas, chimpanzees and orang-utans, elephants, tigers, rhinos, Chiru antelopes and bears to corals, birds, pangolins, reptiles and sturgeon for black caviar.”¹⁴⁴ These species are sold for substantial profit on the black market.

As with any illegal activity, it is impossible to provide an exact figure as to the scale and value, but estimates suggest the illegal trade in wildlife to be worth USD 19 billion (EUR 15.2 billion) or more per year, falling just behind arms and narcotics trafficking. The illegal trade specifically in endangered wildlife products such as elephant ivory, rhino horn, and turtle shells, is worth an estimated USD 7 billion (EUR 5.6 billion) to USD 10 billion (EUR 8 billion) alone, per year.¹⁴⁵

Wildlife trafficking has become one of the most profitable transnational criminal activities globally. Low levels of awareness, low risk of detection and low levels of sanctions, all make the trade very appealing to criminal networks. Illegal wildlife trade is not just a grave threat to species all over the world, but is also becoming an environmental, economic, and national security threat, particularly as the links between wildlife crime and other forms of organised crime and terrorist activity is recognised.

The EU is one of the top three destinations for illegal wildlife (alongside China and the US), while countries and regions rich in biodiversity are major suppliers.¹⁴⁶ The European Union accounts for one third of all ivory seizures worldwide with Belgium, France, Portugal and the UK acting as key transit routes. Caviar, vicuna wool, and reptiles are other frequently traded items. As trade between the EU and Australia is liberalised, there will also potentially be an increased opportunity for illegal trade in live animals and wildlife products.

7.1.1. Nature of legal wildlife trade

The trade in live animals primarily supplies the exotic pet industry, although some species traded are also destined to zoological collections, for use in biomedical research or to stock hunting ranches. Some live specimens traded have been caught in the wild; others may have been captive-bred or ranched to supply the trade. In addition to live animals, wildlife parts and products, such as skin, pelts, bones, horn, ivory, teeth, claws, feathers, shell, meat, glands, secretions and derivatives, are also traded. Some of the animal parts or products are worked into other articles (e.g. handbags, shoes, coats, ornaments, etc.); others are further processed or used as ingredients for the manufacture of other products.

¹⁴³ UNEP *Environmental Crisis Report*, 2014, pg. 23, available at <http://www.unep.org/unea/docs/rracrimereport.pdf>.

¹⁴⁴ *Id.*

¹⁴⁵ Congressional Research Service, *International Illegal Trade in Wildlife: Threats and U.S. Policy*, pg. 1, available at <http://fas.org/sgp/crs/misc/RL34395.pdf> [hereinafter CRS Illegal Trade Report]

¹⁴⁶ CRS Illegal Trade Report, pg. 3.

Recipients of wildlife product imports include - but are not exclusively limited to - the fashion, home-decorating, cosmetic and pharmaceutical industries, traditional medicine, craftsmen, antique dealers and private collectors, and the 'gourmet' food market. Imported animal products may also include specimens for scientific research and hunting trophies.

Wildlife traded in both the EU and Australia may be sourced throughout the world, and if taken from the wild, their removal can be unsustainable leading to serious decline in population of that species. Population decline of any species has numerous negative consequences for the ecosystem. Additionally, captive breeding or ranching facilities often become a place through which wild-caught animals can be laundered. This may go unnoticed and those animals or their products can then enter legal trade. Captive breeding, while "advocated as a means to reduce the pressure on wild species" can also lead to breeding from a limited gene pool, which leads to "low fitness levels of the progeny produced" and breeders still seeking out wild-caught specimens because they are healthier.¹⁴⁷

There are also significant concerns about the welfare of wild animals either being caught or raised and killed for their parts and products, or traded live. Whether wild-caught or captive-bred or ranching, these animals regularly experience physical injury, pain, distress, fear, and other forms of suffering throughout the trade chain: at the stage of capture, housing, transport, slaughter, etc.

Many elements of the wildlife trade are inherently inhumane. Animals can be poisoned, trapped or snared, or bludgeoned to death, and often their parts are removed before they are even dead. For example, in Vietnam and Indonesia, where much of the python skin imported legally under CITES to the EU and Australia originates, inhumane methods, such as decapitation and asphyxiation of live pythons using air compressors or water pumps, are commonly used to slaughter snakes for snakeskin.

There are also serious concerns about the suitability of many of the species kept as exotic pets and ability of private owners to provide the specialised care, diet and housing to meet their behavioural, nutritional and physiological needs. In view of this, Belgium has already adopted a 'positive list' that restricts the number of exotic species that can be sold;¹⁴⁸ the Netherlands¹⁴⁹ and Luxembourg¹⁵⁰ have recently followed suit and are likely to be joined by other Member States.

7.1.2. Tackling illegal wildlife trade in the EU

In the EU, CITES is implemented through a set of Regulations known as the EU Wildlife Trade Regulations, which are binding in their entirety on all Member States (see Annex 1); these measures also go beyond what is required by CITES in some respects. For instance, the European Commission is afforded the possibility to establish import restrictions with regard to certain species/countries.¹⁵¹ One example of this is the EU's decision to require import permit requirements for the import of hunting trophies from six CITES-listed species, namely the African Lion, Polar Bear, African Elephant, Southern White Rhinoceros, Common Hippopotamus and Argali Sheep.¹⁵²

¹⁴⁷ ¹⁴⁷ T. Wyatt (2016) A comparative analysis of wildlife trafficking in Australia, New Zealand and the United Kingdom. *Journal of Trafficking, Organized Crime and Security*, 2 (1): 62-81. <http://nrl.northumbria.ac.uk/27588/1/wyatt%20-%20wildlife%20trafficking%20Aus%2C%20NZ%2C%20UK.pdf> p. 78.

¹⁴⁸ <https://www.lne.be/sites/default/files/atoms/files/Koninklijk%20besluit%20van%2016%20juli%202009%20positief%20lijst.pdf>

¹⁴⁹ <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/01/28/positieflijst-zoogdieren-huisdierenlijst>

¹⁵⁰ <https://deiereschutzgesetz.lu/la-loi/chapitre-1-les-principes-generaux/>

¹⁵¹ http://ec.europa.eu/environment/cites/pdf/differences_b_eu_and_cites.pdf

¹⁵² http://ec.europa.eu/environment/cites/legislation_en.htm

There are no systematic border controls within the Union and Member States are required to implement these rules uniformly. Enforcement provisions on wildlife trade must, however, be transferred into the national legislation (and may even supplemented by additional national measures) and while there is an EU Enforcement Action Plan, which details what action should be taken, the setting of penalties is a matter of national sovereignty, which means that fines and prison terms relating to illegal wildlife trade may vary significantly between EU Member States.¹⁵³

The EU has fully acknowledged that Europe is both a destination market and a hub for the trafficking of wildlife in transit to other regions. This not only includes species illegally taken elsewhere in the world, but Europe is also a region from which various native species are sourced for illegal trade. One good example of this is the illegal export of glass eels (*Anguilla anguilla*), a species listed on CITES Appendix II, to supply the Asian market, particularly Japan and China. A recent joint operation between Europol and the Spanish and Portuguese authorities led to the seizure (and eventual wild release) of 350kg of live glass eels. The organised crime group involved are believed to have earned more than €37 million from illegally trafficking these eels.¹⁵⁴

Eels are, of course, not the only species that are illegally traded and subject to seizures. On the basis of data submitted by Member States, the European Commission reported that the main wildlife commodities exported illegally to the EU between 2011 and 2014 included:

- medicinal products derived from plants (e.g. costus root, American ginseng, orchids, agarwood, African cherry, hoodia and aloe) and animals (seahorses, musk deer, pangolins);
- live reptiles, especially tortoises, but also lizards, chameleons, snakes, iguanas and geckos. Over 6000 live reptiles were seized at EU borders during this period;
- reptile bodies, parts and derivatives, with over 9600 individual items seized. Most were leather and reptile skin products from snakes, crocodiles and lizards;
- live birds and eggs, with a total of over 500 specimens seized; most were parrots smuggled from Africa or Latin America to Europe via transit countries, which attract very high prices on the black market, or birds of prey;
- mammal bodies, parts and derivatives (skins in particular), including bears, wolves, big cats and bush meat;
- live plants, mainly orchids, cacti, euphorbias and cycads, with around 78,000 seized;
- Other commodities frequently imported illegally into the EU include corals, caviar, timber products, dead birds and invertebrates (bodies, parts and derivatives).¹⁵⁵

The Commission notes that the main countries of origin of products exported illegally to the EU include the US, mainland China and Hong Kong, and Thailand. However, it is noted that in recent years, Algeria, Morocco, Switzerland, Tunisia and the United Arab Emirates are also increasingly among the countries of origin.¹⁵⁶ Data submitted by the Member States on seizures is reportedly sometimes patchy and there is also limited information available with respect to prosecutions for wildlife trafficking and the penalties actually imposed.

In 2016, the European Commission adopted an EU Action Plan against Wildlife Trafficking, which outlined the Union's commitments to implement a variety of measures to tackle the illegal wildlife trade. The EU's approach is essentially three-pronged, focusing on prevention, stronger enforcement and global partnership.¹⁵⁷

¹⁵³ http://ec.europa.eu/environment/cites/legislation_en.htm

¹⁵⁴ <https://www.europol.europa.eu/newsroom/news/glass-eel-traffickers-earned-more-eur-37-million-illegal-exports-to-asia>

¹⁵⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD:2016:38:FIN>

¹⁵⁶ Ibid

¹⁵⁷ http://ec.europa.eu/environment/cites/trafficking_en.htm

The EU Action Plan against Wildlife Trafficking seeks to implement measures to reduce both the demand for and supply of illegal wildlife products. Not only via established channels, such as CITES, but also through awareness-raising within the EU and engagement with the relevant sectors involved in legal wildlife trade. Commitments to both supporting local communities in the countries of origin and taking multilateral and bilateral measures to tackle corruption are also made. The second key focus of the plan is on improving the implementation and enforcement of existing instruments and stepping-up the fight against organised criminal groups through better coordination, training and technical assistance both within the EU and internationally. Finally, the EU aims to strengthen the global partnership of source, consumer and transit countries against wildlife trafficking. Amongst other things, trade policy is one of the instruments that the EU is committed to use to achieve these ends.¹⁵⁸

It remains to be seen how effective the EU and its Member States will be in the implementation of the Action Plan, but it is clear that the issue of illegal wildlife trade has been placed firmly on the current EU political agenda.

7.1.3. Tackling illegal wildlife trade in Australia

Australia has strict import requirements for wildlife, which are linked in part to biosecurity and the need to protect its own rich biodiversity. The country goes beyond standard CITES requirements since its Environmental Protection and Biodiversity Conservation Act 1999 also requires import certificates for several species listed on Appendix II. In other words, species that are not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilisation incompatible with their survival. This applies not just to commercially traded specimens, but also to non-commercial imports and exports too.¹⁵⁹ Australia has put in place stricter domestic measures for all lion, elephant and cetacean species treating them all as if on Appendix I¹⁶⁰.

The export of live native animals for commercial trade is effectively prohibited. Only six native bird species may be legally be taken out of the country at all, as pets when they are accompanied by the owner. Other live species are only permitted for export for specific research or zoo purposes. Commercial operations, such as crocodile farming, kangaroo product trade and captive bird breeders, must be government approved, licensed and subject to a strictly regulated permit system.¹⁶¹

Research suggests that wildlife trafficking in Australia tends to take place via the use of human couriers (travelling via airports) and postal deliveries. Most customs seizures are reported to be from individuals carrying prohibited items that have been purchased abroad; only one percent of seizures are deemed to be major as regards the quantity and value of items seized and some of these have involved organised crime networks, such as motorcycle gangs.¹⁶²

Reptiles, especially crocodiles, are the most frequently trafficked wildlife exported from Australia; corals are the second most common illegal export. Illegal exports are reported to predominantly be going to the US, Europe and New Zealand.¹⁶³ In addition, there is also inter-state smuggling of protected species within Australia.

¹⁵⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:87:FIN>

¹⁵⁹ T. Wyatt (2016) A comparative analysis of wildlife trafficking in Australia, New Zealand and the United Kingdom. *Journal of Trafficking, Organized Crime and Security*, 2 (1): 62-81. <http://nrl.northumbria.ac.uk/27588/1/wyatt%20-%20wildlife%20trafficking%20Aus%2C%20NZ%2C%20UK.pdf>

¹⁶⁰ <http://www.environment.gov.au/biodiversity/wildlife-trade/cites/stricter-measures>

¹⁶¹ Ibid. p. 65

¹⁶² Ibid pp.65-67.

¹⁶³ Ibid pp.65-67.

As regards seizures of wildlife entering or being trafficked through Australia, reptiles, such as snakes and tortoises, are the animals that are most frequently smuggled (often by post), followed by birds, eggs and 'traditional' medicines derived from endangered species, such as seahorses.¹⁶⁴ Wyatt (2016) notes that there is a regional pattern associated with wildlife confiscations with most specimens deriving from neighbouring nations, or those in close proximity to Australia.¹⁶⁵

Fines are reportedly the most common penalty for wildlife trafficking and can be "up to A\$110,000 [ca. €69,4000] for an individual and A€550,000 [ca. €347,000] for a corporation with a maximum of ten years imprisonment," yet actual penalties awarded are described as weak in practice since "less than one-quarter of identified cases" are prosecuted and "penalties are only a fraction of the maximum that could be given."¹⁶⁶

7.2. Protecting domestic wildlife and habitats

It is vital that the EU-Australia FTA includes strong commitments to the protection of wildlife and wildlife habitats. This applies not only to the species that are found in international trade (both legal and illegal), but also to the protection of domestic wildlife as well. The removal of animal species from the wild can occur at unsustainable levels leading to serious population declines, with dire consequences for the ecosystem. Likewise, the disappearance of habitats is one of the leading causes of population declines in endangered and threatened species.

Australia is presently failing its own wildlife in this regard. Eastern Australia has been described as a global deforestation hotspot with 395,000 hectares of vegetation cleared in 2015/2016¹⁶⁷, rivalling hotspots such as the Amazon, Congo and Borneo. A booming livestock industry, which exports to the EU, is a big part of the problem. Indeed, habitat loss accounts for a quarter of the 1640 plant and animal species listed as threatened in Australia; already the country leads the world in mammalian extinctions. Yet there is much to lose with 91% of the continent's flowering plants, 85% of its mammals and 45% of its birds found nowhere else on the planet¹⁶⁸. The woodlands and shrublands of South Western Australia and the forests of Eastern Australia are international biodiversity hotspots of global significance¹⁶⁹.

While generally less biodiverse than Australia (aside from the Mediterranean Basin, which is considered to be a biodiversity hotspot), EU Member States are also failing to fully protect their native species and their habitats, despite legislation designed to provide comprehensive protection to over 1000 animal and plant species and over 200 types of habitats (Council Directive 92/43/EEC) and ensure the protection of all wild bird species (Directive 2009/147/EC) in the Union. Additional legislation entered into force in 2015 to deal with the increasing problem of invasive alien species and further protect biodiversity in the Union.

These EU Nature Directives are being routinely contravened by Member States. The issue of illegal bird hunting and trapping, which primarily targets migratory species and songbirds, provides a good case in point. From time to time, the European Commission will indeed pursue legal action against Member States for failing to comply with their obligations under this EU legislation. In recent years, infringement proceedings have been instigated against Malta¹⁷⁰,

¹⁶⁴ Ibid pp.65-67.

¹⁶⁵ Ibid

¹⁶⁶ Ibid. p.68

¹⁶⁷ Queensland Department of Science, Information Technology and Innovation. 2017. Land cover change in Queensland 2015–16: a Statewide Landcover and Trees Study (SLATS) report. DSITI, Brisbane.

¹⁶⁸ <https://soe.environment.gov.au/science/soe/2011-report/8-biodiversity/1-introduction/1-1-importance>

¹⁶⁹ <https://www.cepf.net/our-work/biodiversity-hotspots>

¹⁷⁰ http://europa.eu/rapid/press-release_IP-15-5658_en.htm

Austria,¹⁷¹ Spain¹⁷², France¹⁷³ and Finland for not implementing and enforcing the Birds Directive and allowing illegal killing to continue unhindered.¹⁷⁴

7.2.1. Kangaroo product trade

Kangaroos are killed by their millions in Australia each year both commercially and non-commercially. A proportion of their meat, in addition to fur and leather, is exported to the EU. The sustainability of the industrial-scale slaughter of these native wild marsupials has been brought into question, particularly given the fact that kangaroos grow and breed slowly and have high levels of juvenile mortality. Loss of habitat, urban development agricultural practices and drought also pose a threat to kangaroos. Population data and survey methods are deemed to be flawed.

In addition to these conservation concerns, there are serious animal welfare problems associated with the kangaroo product trade. The killing of kangaroos takes place in remote places largely away from public view and also at night. This results in unknown numbers of animals being 'struck and lost'; animals are wounded by bullets and may suffer horrific injuries, being left to die and not included in the statistics. There is evidence that between 4 and 40% of commercially shot animals are not shot directly in the brain, but in the neck or body.¹⁷⁵

There is also concern for the welfare of joeys, which grow and live in their mother's pouch. For red kangaroos, the largest marsupial species, joeys will leave the pouch permanently at around 235 days after birth, but will continue to suckle until about 12 months of age.¹⁷⁶ Australia has a *National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes*, which requires shooters to shoot dependent joeys that are outside the pouch, and decapitate or "crush the skull and destroy the brain" of pouch young.¹⁷⁷

Nonetheless, research reveals that most dependent joeys are simply left and die of exposure, starvation or predation, whereas those taken from the pouch are killed by hunters smashing their heads against vehicles.¹⁷⁸ Their deaths are also left unrecorded.

Finally, there are also significant public health concerns about kangaroo meat. Wild kangaroos are shot and butchered in the field without any supervision. They are transported on unrefrigerated open trucks exposed to dust and flies and frequently high ambient temperatures. Kangaroo meat therefore can carry pathogens, which are dangerous to human health.

Indeed, the European Commission's RASFF database shows that between 2012 and 2017, EU Member States reported ten incidents of shigatoxin-producing *Escherichia coli* and one case of *Salmonella enterica* contamination being detected in frozen or chilled kangaroo meat imported from Australia. It should also be noted that Russia has already prohibited the import of kangaroo meat as a result of public health concerns.

There are presently five establishments – cold stores and game handling establishments - in Australia (2 in Queensland and 3 in South Australia) that are approved for the export of wild game meat to the European Union. Just two of these also examine carcasses for trichinae.¹⁷⁹

¹⁷¹ http://europa.eu/rapid/press-release_MEMO-18-3446_en.htm

¹⁷² Ibid

¹⁷³ http://europa.eu/rapid/press-release_MEMO-16-4211_en.htm

¹⁷⁴ http://europa.eu/rapid/press-release_IP-18-1446_en.htm

¹⁷⁵ Ben-Ami, D et al (2014) The welfare ethics of the commercial killing of free-ranging kangaroos: an evaluation of the benefits and costs of the industry. <http://bit.ly/2z03ulc>

¹⁷⁶ https://en.wikipedia.org/wiki/Red_kangaroo

¹⁷⁷ <http://www.environment.gov.au/biodiversity/wildlife-trade/publications/national-code-practice-humane-shooting-kangaroos-and-wallabies-commercial>

¹⁷⁸ <https://awpc.org.au/the-animals/kangaroo/>

¹⁷⁹ https://webgate.ec.europa.eu/sanco/traces/output/AU/WM_AU_en.pdf

7.2.2. Crocodile hunting and farming

Before crocodile hunting was prohibited in Australia during the 1970s, the saltwater crocodile (*Crocodylus porosus*) was a species threatened with extinction primarily due to over-exploitation. It is now listed on CITES Appendix II and it is only protection from hunting that allowed wild crocodile populations to recover. A second native species, the freshwater crocodile (*C. johnstoni*) is also likewise CITES listed.

In recent years, there have been repeated proposals to allow the trophy hunting of crocodiles on tourist safaris in Australia's Northern Territory. Calls for crocodile culls have also been issued by politicians in the wake of incidents of human death and injury.

Along with grave concerns about the sustainability of such hunts, there are serious concerns about the welfare of crocodiles targeted given that it is unlikely that a shot crocodile will remain clear of the water for long enough to enable a second shot, if the hunter does not get a clean kill first shot. This will likely result in injured crocodiles returning to the waterways.

There have also been repeated calls in Australia for the harvesting of live crocodile eggs to supply crocodile farms, which produce meat, leather and other goods. This, however, could have a potentially devastating impact on wild populations given that few crocodiles reach maturity in the wild.¹⁸⁰

Crocodiles are legally farmed in Australia primarily for their skin, and their meat is a by-product. At present, no crocodile meat is recorded in the EU import statistics, nor do any establishments appear to be approved for the export of reptile meat to the EU.

The crocodile industry operates in both the Northern Territory and Queensland. Commercial operators are obliged to comply with the *Code of practice for the humane treatment of wild and farmed Australian crocodiles*, which establishes an 'achievable minimum standard of humane conduct in regard to the treatment of wild and farmed crocodiles'.¹⁸¹

With respect to killing methods, the aforementioned code states that for "a humane kill, the International Union for Conservation of Nature Species Survival Commission (IUCN-SSC) Crocodile Specialist Group currently recommends total destruction of brain function by either humane captive bolt pistol or appropriate calibre bullet directly to the brain, or by instantaneously severing the spine behind the head and immediately inserting a rod into the brain (pithing)".¹⁸²

¹⁸⁰ Is it right to take wild crocodile eggs? 12th February 2016 <https://www.bbc.com/news/world-australia-35339947>

¹⁸¹ Code of practice for the humane treatment of wild and farmed Australian crocodiles
<http://www.environment.gov.au/biodiversity/wildlife-trade/publications/code-practice-humane-treatment-wild-and-farmed-australian-crocodiles>

¹⁸² Ibid, p. 18

8. Protecting the marine environment

The protection of the marine environment should be comprehensively addressed in the TSD chapter of the EU-Australia FTA. Overfishing, bycatch, IUU fishing and the protection of marine species, such as sharks, marine mammals, turtles and seabirds, and their ocean habitats are important issues that must be considered during the negotiations.

8.1. Consumption, production and trade in fish products

Australia has a higher per capita level of fish consumption at 27.3 kg than the EU, which presently is estimated at 22 kg per capita.¹⁸³ However, unlike Australia, the EU is highly dependent on fishery imports to satisfy domestic demand.

According to the FAO, in 2014, the combined imports of EU Member States “represented 63 percent by value and 59 percent by quantity of world imports of fish and fishery products. The EU is, by far, the largest single market for fish imports, valued at US\$54 billion in 2014 (US\$28 billion if intra-EU trade is excluded), up 6 percent from 2013.”¹⁸⁴ Sweden, Germany, the UK, France, Italy and Spain number among the top ten fish and fish products importers worldwide, while the Netherlands and Denmark are the only EU Member States to feature in the global top ten fish exporters.¹⁸⁵

In terms of volume, the EU exports 2,470,000 tonnes of fish products (live weight equivalent) per annum and exports 7,818,000 tonnes thereof. Australia imports around 516,000 tonnes of fish products (live weight equivalent) and exports 61,000 tonnes.¹⁸⁶ The EU presently produces around 6,654,000 tonnes of fish (live weight equivalent) per annum, of which 1,273,000 derives from aquaculture production. Australia’s annual production average is 228,000 tonnes, including 76,000 tonnes from aquaculture.¹⁸⁷

All Australian Commonwealth and export fisheries are required to be assessed for their ecological sustainability under the *Commonwealth Environment Protection and Biodiversity Conservation Act*. Conditions may be placed on export approvals so that the fisheries comply with sustainability guidelines. In the past Humane Society International has made use of merits review provisions to challenge export approvals we considered unsatisfactory. Such review provisions are no longer available.

8.2. Illegal, Unreported and Unregulated (IUU) fishing

Illegal fishing compromises sustainable fisheries, depletes already declining populations of fish, threatens our environment, and undermines food security. *Illegal* fishing refers to fishing that violates applicable rules, most commonly those set by Regional Fisheries Management Organisations (RFMOs) or coastal states. *Unreported* fishing suggests that the catch is not reported, under-reported or misreported, while *unregulated* is in reference to “fishing operations undertaken where there are no management controls (for example, on some of the high seas) or where these are insufficient or not adequately applied.”¹⁸⁸

¹⁸³ FAO. 2016. The State of World Fisheries and Aquaculture 2016. Contributing to food security and nutrition for all. Rome. 200 pp. <http://www.fao.org/3/a-i5555e.pdf>

¹⁸⁴ Ibid

¹⁸⁵ Ibid

¹⁸⁶ Ibid p. 181

¹⁸⁷ Ibid, p.173.

¹⁸⁸ Organisation for Economic Co-operation and Development, Illegal Trade in Environmentally Sensitive Goods, Synthesis Report, 25 Jul 2012, pg. 14-15, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE\(2011\)45/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE(2011)45/FINAL&docLanguage=En)

The United Nations Office on Drugs and Crime (UNODC) defines “illegal fishing” as an “environmental crime.”¹⁸⁹ Although there is no global agreement that controls trade in all fish, the 2009 Agreement on Port State Measures of the Food and Agriculture Organization of the United Nations (FAO) seeks to “place binding controls on trade in fish and fish products once it is fully implemented.”¹⁹⁰ Trade-based measures are another effective tool in combating IUU fishing, therefore the EU-Australia FTA must include strong provisions on this issue.

Many global fisheries are managed by Regional Fisheries Management Organisations (RFMOs) and coastal states, while others are managed by bilateral agreements and domestic measures. A variety of RFMOs have been established globally for both highly migratory fish stocks and non-tuna species. These have varying responsibilities, for instance “the Western and Central Pacific Fisheries Commission (WCPFC) and the Atlantic Fisheries Organisation, and others such as the Indian Ocean Tuna Commission focus on particular species. These lay down rules related to the conservation and management of the fisheries in question, including rights of access, fishing quotas, measures to reduce the incidental catch of seabirds and [marine] mammals, and measures designed to reduce catches of non-target fish species.”¹⁹¹ The table below outlines the RFMO membership of the EU and Australia.

RFMO Membership	
European Union	
Tuna RFMOs	IATTC, ICCAT, WCPFC, OITC, and AIDCP. The EU is a cooperating non-member of the CCSBT.
Non-Tuna RFMOs	CCAMLR, GFCM, NEAFC, NASCO, NAFO, SEAFO, SPRFMO, SIOFA, WECAFC, and CECAF. The EU is not a member of the CCBSP
Australia	
Tuna RFMOs	IOTC, WCPFC and CCSBT
Non-Tuna RFMOs	SIOFA, SPRFMO, CCAMLR and Pacific Ocean Fora ¹⁹²

Illegal fishing is valued at approximately US\$10 billion to US\$23.5 billion annually,¹⁹³ with the total world trade in fish and fishery products estimated at US\$129 billion. It is also estimated that IUU fishing takes 11–26 million tonnes of fish each year.¹⁹⁴ Poor flag-state and port-state controls, difficulty in tracing IUU fishing activity, and “misreporting of catches and retention of undersized fish or fish caught over the allowed quotas”¹⁹⁵ are some of the reasons IUU fishing is so prevalent. The United Nations Environment Programme (UNEP) Environmental Crime Crisis report identifies IUU fishing as the third largest environmental crime following illegal trade in timber and minerals.

IUU fishing has many devastating impacts. For example, it:

¹⁸⁹ United Nations Office on Drugs and Crime, Transnational Organized Crime in the Fishing Industry, 2011, pg. 96,

http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf.

¹⁹⁰ Organisation for Economic Co-operation and Development, Illegal Trade in Environmentally Sensitive Goods, Synthesis Report, 25 Jul 2012, pg. 68,

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE\(2011\)45/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE(2011)45/FINAL&docLanguage=En)

¹⁹¹ Organisation for Economic Co-operation and Development, Illegal Trade in Environmentally Sensitive Goods, Synthesis Report, 25 Jul 2012, pg. 14.

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE\(2011\)45/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE(2011)45/FINAL&docLanguage=En)

¹⁹² <http://www.agriculture.gov.au/fisheries/international>

¹⁹³ D.J. Agnew, J. Pearce, G. Pramod, T. Peatman, R. Watson, J.R. Beddington and T.J. Pitcher. 2009. Estimating the worldwide extent of illegal fishing. PLoS ONE, 4(2): e4570,

www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570;jsessionid=604D72E332D75382B5EC14CB81197AD.D

¹⁹⁴ FAO SOFIA 2014, pg. 84.

¹⁹⁵ Organisation for Economic Co-operation and Development, Illegal Trade in Environmentally Sensitive Goods, Synthesis Report, 25 Jul 2012, pg. 68,

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE\(2011\)45/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=COM/TAD/ENV/IWPTE(2011)45/FINAL&docLanguage=En)

- Undermines the sustainable practices of legitimate fishing operations and presents unfair market competition to sustainable seafood;
- Can devastate local fish stocks and destroy sensitive, productive marine habitats through the use of harmful fishing gear¹⁹⁶ and practices;
- Threatens food security and socio-economic stability in many parts of the world by reducing the productivity of legitimate fisheries, including artisanal fisheries in coastal areas;
- Results in economic losses with a global value estimated at \$10 to \$23.5 billion annually;
- Produces between 11 and 26 million tons of seafood annually, representing as much as 40 percent of the total catch in some fisheries.¹⁹⁷

Both the EU and Australia acknowledge the FAO International Plan to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, as well as the FAO Agreement on Port State measures to Prevent, Deter, and Eliminate Illegal, Unreported Fishing (Port State Measures Agreement). The aforementioned treaty was adopted by the FAO in 2009 and is “the first binding global instrument focused specifically on combating IUU fishing.” The Port State Measures Agreement “establishes minimum standards for the conduct of dockside inspections and training of inspectors and, most significantly, requires parties to restrict port entry and port services for vessels known or reasonably suspected of having been involved in IUU fishing.” The EU ratified this treaty in 2011, together with ten other parties. Australia is a signatory, but has not yet formally ratified it.

8.2.1. EU action against IUU fishing

As the world’s largest importer of fish and fishery products, the EU has taken significant steps to combat IUU fishing. For example, in 2008 the EU passed Council Regulation (EC) No 1005/2008¹⁹⁸ (IUU Regulation) to prevent, deter and eliminate IUU fishing which was implemented in 2010.¹⁹⁹ The IUU Regulation “aims to ensure that any individual or business wishing to import fish and fish products into the EU can only do so if the country under whose flag the fish was caught can show that it has in place, and enforces, laws and regulations to conserve and manage its marine resources.”²⁰⁰

This Regulation permits EU Member States to prohibit fish imports if they “are not accompanied by a catch certificate; were caught by a vessel that has been found to engage in IUU fishing; were caught by a vessel included in the EU IUU fishing list; or were caught by a vessel flying the flag of a non-cooperating third country.”²⁰¹ Additionally, “[t]rade sanctions can also be imposed on fish caught by vessels found to have engaged in IUU fishing” and EU Member States “can ban imports as an immediate enforcement measure if a vessel has been caught fishing illegally.”²⁰²

¹⁹⁶ For example, IUU fishing leads to increased ghost gear because illegal fishing boats are more likely to abandon their gear and because they are more likely to use gear in poor condition which is more likely to break off into the ocean. Ghost gear leads to entanglement of marine animals.

¹⁹⁷ NOAA, NOAA Fisheries Service, Illegal Fishing: Not in Our Ports, http://www.fisheries.noaa.gov/ia/iuu/portstate_factsheet.pdf.

¹⁹⁸ European Commission. 2008. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal fishing, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>.

¹⁹⁹ European Commission. 2009. Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:280:0005:0041:EN:PDF>.

²⁰⁰ Food and Agriculture Organization of the United States (FAO), The State of World Fisheries and Aquaculture, 2010, pg. 94, <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

²⁰¹ Ibid.

²⁰² Ibid.

As an example of measures that can be taken, in 2013 the European Commission “designated . . . Cambodia and Guinea as non-cooperative, meaning that seafood products from these countries can no longer be exported into the trade bloc” because they were unable to ensure that catch documentation “verified by the authority of the flag state.”²⁰³ In October of 2014, the Commission also proposed to ban imports from Sri Lanka.²⁰⁴ It also warned the Philippines and Papua New Guinea regarding their insufficient action to combat IUU fishing.²⁰⁵ At the same time, although imports from Belize were also banned in 2013, the EU proposed to lift the ban after Belize demonstrated “commitment to reforming its legal framework and adopting a new set of rules for inspection, control and monitoring of vessel.”²⁰⁶ Some developing countries have expressed concerns regarding implementation of the Regulation’s stringent requirements, and the EU has offered assistance and capacity building to assist with implementation.²⁰⁷

An additional EU measure is Council Regulation (EC) No 1224/2009²⁰⁸ of 20 November 2009 establishing a community control system for ensuring compliance with the rules of the common fisheries policy. The Regulation “aims at ensuring compliance with the rules of the common fisheries policy (CFP) throughout the production chain – i.e. from the boat to the retailer. Inspections at sea are still carried out, but they are enhanced in ports, during transport, in processing factories, on markets, etc., to check that fish has been caught legally.”²⁰⁹

It should, however, be noted that while the EU may be at the forefront of the fight against IUU fisheries, there are still illegal fishing activities taking place in EU waters, or by vessels operating under an EU flag elsewhere in the world. Some Member States are failing to properly implement fisheries control measures and to impose penalties. There are also loopholes in the system, which permit a significant proportion of EU vessels to not be tracked by a vessel monitoring system.²¹⁰ A proposal has recently been published by the European Commission to revise Regulation (EC) No 1224/2009.²¹¹

8.2.2. Australian action against IUU Fishing

The Australian Fisheries Management Authority uses a range of measures to deter IUU fishing in Australian waters including vessel monitoring systems, electronic logbooks, catch documentation schemes, logbooks, observers, audits and inspections²¹². IUU fishing is a particular problem in Australia’s remote sub-Antarctic territories for Patagonian toothfish and also in its northern waters with Indonesian vessels targeting sharks for their fins.

²⁰³ Auden Lem, Matthew Camilleri, Tackling illegal, unreported, and unregulated fishing: New approaches, Biores, Volume 8 - Number 6, 15 Jul 2014, <http://www.ictsd.org/bridges-news/biores/news/tackling-illegal-unreported-and-unregulated-fishing-new-approaches>.

²⁰⁴ European Commission, Press Releases, Illegal fisheries: green cards for five countries, but red card for Sri Lanka, 14 Oct 2014, http://europa.eu/rapid/press-release_IP-14-1132_en.htm.

²⁰⁵ European Commission, Press Releases Database, Commission warns Philippines and Papua New Guinea over insufficient action to fight illegal fishing, 10 Jun 2014, http://europa.eu/rapid/press-release_IP-14-653_en.htm.

²⁰⁶ European Commission, Press Releases, Illegal fisheries: green cards for five countries, but red card for Sri Lanka, 14 Oct 2014, http://europa.eu/rapid/press-release_IP-14-1132_en.htm.

²⁰⁷ Ibid.

²⁰⁸ European Commission, 2009. Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a community control system for ensuring compliance with the rules of the common fisheries policy, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1224&from=EN>.

²⁰⁹ European Commission, 2009. Council Regulation (EC) No 1224/2009, Summary of Legislation, <http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32009R1224>.

²¹⁰ <https://eu.oceana.org/en/press-center/press-releases/eu-proposal-does-not-ensure-ambitious-control-system-tackle-illegal>

²¹¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control https://ec.europa.eu/fisheries/sites/fisheries/files/docs/com-2018-368_en.pdf

²¹² <http://www.afma.gov.au/monitoring-enforcement/combating-illegal-fishing-2/>

8.3. Protecting sharks

Sharks are highly vulnerable to over-exploitation, owing to their slow growth, long gestation and low reproductive output. Over-exploited shark stocks can take years or even decades to recover. The threat of over-exploitation is exacerbated by the lengthy migrations undertaken by many shark species. Even if they are protected in one area, sharks can move into areas where they are not subject to protection.

It is difficult to obtain accurate figures for shark landings by country. This is partly because countries do not always report their landings to the FAO. In addition, the use of flags of convenience and bi-lateral "joint venture" agreements may also have a significant effect on landings data, in terms of the attribution of shark catches landed under such agreements.

This notwithstanding it is indisputable that the European Union is a major player in the shark fishing industry. According to a 2012 FAO report on the conservation and management of sharks, the EU was responsible for 17 percent of reported global catches in 2010, landing nearly 130,000 tonnes of sharks. Spain was responsible for almost half of these catches, followed by France, Portugal and the UK.²¹³ These countries, however, tend to fish for different species; Spain and Portugal, for example, target primarily blue sharks and short fin makos.

In its 2012 report, the FAO notes that average annual landings of sharks reported by Australia were about 9,000 tonnes over the previous decade. It is stated that "catches exceeded 11,000 tonnes in 2004 and in 2005, then steadily decreased to 6,963 tonnes in 2010".²¹⁴ There is concern over the sustainability of shark fisheries in Australia. For example, hammerhead sharks on the Great Barrier Reef may have declined by as much as 66% to 83% of the 1960s population level and yet they continue to be commercially targeted and at levels that are considered too high for their recovery. Amendments to regulations have recently been tabled to expressly allow the commercially targeting of the scalloped hammerhead shark in the Great Barrier Reef Marine Park despite the species being listed as threatened under *Australia's Environment Protection and Biodiversity Conservation Act* and considered endangered on the IUCN Red List.

8.3.1. Shark finning

One of the key threats posed to shark populations globally is shark finning. Shark finning is defined as the on-board removal of a shark's fins and the discarding of the body at sea. This practice poses a significant threat to many shark stocks and to the health of marine ecosystems. It is also a threat to traditional fisheries and to food security in some low-income countries.

Tens of millions of sharks are estimated to be finned worldwide each year to satisfy the demand for the Asian delicacy shark fin soup. The fins are generally far more profitable than the meat. Once the shark has been discarded, the fins can be dried on deck, eliminating the need for (freezer) storage space, which can be used for species, such as tuna, that are more profitable. It is therefore inherently unsustainable, since it allows fishers to catch an almost unlimited number of sharks.

This greatly increases the threat to sharks and, by removing large numbers of top predators from marine ecosystems, is likely to have dramatic and negative impacts on other species, including commercially-important species. Predictive modelling has shown that the removal of apex

²¹³ Fischer, J., Erikstein, K., D'Offay, B., Barone, M. & Guggisberg, S. (2012). Review of the Implementation of the International Plan of Action for the Conservation and Management of Sharks. FAO Fisheries and Aquaculture Circular No. 1076. Rome, FAO. 120 pp. <http://www.fao.org/docrep/017/i3036e/i3036e.pdf> p. 10

²¹⁴ Ibid p. 46

predators like sharks from their ecosystems can have unpredictable and often devastating impacts on other species.

Gathering and analysing catch data is the *sine qua non* of shark conservation. It is difficult and, in some cases, impossible to identify a shark species solely by inspecting its fins. The mass finning of sharks precludes the possibility of gathering accurate data on shark catches by species and, thereby, of carrying out stock assessments and implementing shark management regimes.

In 2011, the European Union finally closed the loopholes in its existing legislation concerning the removal of fins of sharks on board vessels by requiring that all sharks - landed by EU vessels anywhere in the world – are landed with their fins still naturally attached. The fin may still be partially cut, leaving a certain proportion still attached to allow the fins to be flattened against the carcass to facilitate storage.²¹⁵

Some jurisdictions in Australia (Queensland, Northern Territory and Western Australia) have yet to require sharks to be landed with their fins naturally attached²¹⁶. For example, in the Queensland East Coast Inshore Fin Fishery it is not a requirement to land sharks with fins naturally attached until 75% of the quota has been reached.

Demand for shark fins drives unsustainable fishing for sharks including the targeting of threatened species. It is vital that the EU-Australia FTA requires that a prohibition on trade in shark fins be enacted and effectively enforced by both parties and to ensure that remaining Australian states presently without specific legislation require each shark be landed with the fins naturally attached.

8.3.2. Shark nets and drumlines

Australia is presently failing to protect its shark populations and other marine wildlife due to outdated policies and attitudes towards these elasmobranchs. Marine species in the waters of New South Wales and Queensland are imperilled by unscientific shark net and drumline culling programmes that are supposed to protect people from sharks. They are ineffective, and inevitably lead to the deaths of thousands of endangered marine species, such as critically endangered grey nurse sharks, endangered hammerhead sharks, threatened great white sharks, threatened loggerheads, hawksbill and green turtles, dugongs, rays, dolphins and whales.

It is vital that the EU-Australia FTA includes strong commitments to the protection of both domestic wildlife and wildlife habitats. The removal of animal species from the wild can occur at

²¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1531214360440&uri=CELEX:52012AP0449>

²¹⁶ Commonwealth - Naturally attached policy (See section 9Z0) <https://www.legislation.gov.au/Details/F2017C00241>

Victoria - Naturally attached policy. (Section 93(I)/(II). Subsection two

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt10.nsf/DDE300B846EED9C7CA257616000A3571/658A74437F878900CA25814F0017B387/\\$FILE/09-2sra020%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt10.nsf/DDE300B846EED9C7CA257616000A3571/658A74437F878900CA25814F0017B387/$FILE/09-2sra020%20authorised.pdf)

South Australia - Naturally attached policy (see section 18)

[https://www.legislation.sa.gov.au/LZ/C/R/FISHERIES%20MANAGEMENT%20\(GENERAL\)%20REGULATIONS%202017/CURRENT/2017.226.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/R/FISHERIES%20MANAGEMENT%20(GENERAL)%20REGULATIONS%202017/CURRENT/2017.226.AUTH.PDF)

New South Wales - Naturally attached policy https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0005/630707/Section-8-Notification-Fishing-Closure-Prohibition-on-Shark-Fin.pdf

Tasmania - Naturally attached policy <https://www.legislation.tas.gov.au/view/html/inforce/current/sr-2015-068#GS16@EN>

Northern Territory - <https://legislation.nt.gov.au/Legislation/FISHERIES-REGULATIONS>

West Australia - no naturally attached policy - Section 16B "Subregulation (1) does not prevent the master of a fishing boat from having on the boat a shark or ray that is not a whole shark or ray if — (a) all of the parts of the shark or ray (other than disposable parts) are on the boat together; and

(b) either — (i) the only parts (other than disposable parts) that have been removed from the shark or ray are one or more of the fins; https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1458_homepage.html

unsustainable levels leading to serious population declines, with dire consequences for the ecosystem. The continued use of shark nets and drumlines pose a threat to native marine wildlife.

8.4. Accidental bycatch of marine mammals, turtles and seabirds

For decades, dolphin, porpoise and whale bycatch has been a major conservation and welfare concern in the EU with high numbers continuing to die each year. Despite binding legal requirements to monitor and reduce bycatch, cetacean bycatch monitoring has been insufficient in most fisheries and areas and has thus often impeded the application of effective mitigation.

The leading European expert body, the ICES Bycatch Working Group, has repeatedly raised concern about the inadequate and poor quality of cetacean bycatch monitoring, assessment and mitigation, highlighting the threat posed to populations by current bycatch levels. These scientific concerns have been echoed by Regional Agreements, ASCOBANS and ACCOBAMS, which are dedicated to the conservation of cetaceans, and also by the European Cetacean Society.²¹⁷

The current EU cetacean bycatch legislation (Council Regulation (EC) No 812/2004²¹⁸) has been found to have significant weaknesses and is being repealed and incorporated into a proposed new Regulation on the conservation of fishery resources and the protection of marine ecosystems through technical measures (2016/0074).²¹⁹

This new legislation, which is presently still under negotiation, provides the opportunity to improve monitoring and mitigation requirements and to help safeguard European cetacean populations – as well as seals, seabirds and marine turtles. However, thus far, both the Parliament and Council have failed to follow scientific advice and take the necessary steps to strengthen existing legislative measures and ensure a higher level of protection for cetaceans and other marine species against bycatch.

The Australian Government has a Commonwealth Policy on Fisheries Bycatch which is intended to ensure that direct and indirect impacts of fishing on marine systems are considered and managed. This is done through mechanisms that reduce bycatch, improve mitigation measures for protected species and generally minimise impacts of fishing on the marine environment. The Department of Agriculture and Water Resources, which manages the policy, says it pursues bycatch management options that are practical, cost effective to apply and support environmental and fisheries legislative requirements²²⁰. The policy is currently under revision with a new policy due to be released by the end of 2018.

In the oceans close to and around Australia, albatrosses and petrels are the species most frequently caught incidentally from fishing activities. This group of birds are among the world's most endangered. To address key threats to seabirds from fishing activities in Australia, the Australian Government is part of the:

- United Nations Food and Agriculture Organisation (FAO) International Plan of Action (IPOA–Seabirds). The IPOA–Seabirds is a voluntary instrument within the framework of the FAO Code of Conduct for Responsible Fisheries and sets out principles and international standards of behaviour for responsible fishing practices.

²¹⁷ Dolman, S.J., Baulch, S., Evans, P.G.H., Read, F.L. and Swabe, J. (2018) What future for cetacean bycatch in European waters? Views on the current legislative process to revise & update EU bycatch measures and suggested solutions to reduce bycatch http://www.ascobans.org/sites/default/files/document/AC23_Inf_6.1.b_Dolman%20et%20al%202017%20Cetacean%20bycatch%20paper%20for%20ASCOBANS%20v7.pdf

²¹⁸ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004R0812>

²¹⁹ https://ec.europa.eu/fisheries/cfp/fishing_rules/technical_measures_en

²²⁰ <http://www.agriculture.gov.au/fisheries/environment/bycatch/review>

- Agreement on the Conservation of Albatrosses and Petrels (ACAP) which is under the auspices of the Convention on Migratory Species (CMS).

ACAP recommends best practice guidelines to mitigate seabird bycatch caused by demersal and pelagic longline and trawl fisheries. France, Spain and the UK are also parties to ACAP. It is essential that the FTA require all parties with longline and trawl fisheries operating in the range of albatross and petrels to implement ACAP's best practice guidance to avoid these birds being killed. It is further essential that the FTA further compel Australia and the EU to promote and seek to negotiate the adoption of the ACAP best practice guidelines at the Regional Fisheries Management Organisations they are members of.

The Department of the Environment and Energy is responsible for a national Threat Abatement Plan for the Incidental Catch (or Bycatch) of Seabirds during Oceanic Longline Fishing Operations. This follows a HSI nomination to have longline fishing recognised under Australian environment law as a Key Threat to albatross and petrels. The Threat Abatement Plan coordinates action to alleviate the impact of longline fishing activities on seabirds. It only applies to all fisheries under the Commonwealth jurisdiction.

The Department of Agriculture and Water Resources is developing a National Plan of Action for minimising the incidental catch of seabirds in Australian capture fisheries (NPOA–Seabirds). The final NPOA–Seabirds is awaiting endorsement from two states before it is released. The FTA should require that both Europe and Australia have developed National Plans of Action recommended by the FAO as relevant to their fisheries.

Like longline fishing to seabirds, incidental catch of sea turtles during coastal otter-trawling has been listed a Key Threatening Process to marine turtles under Australia's environment law (also as a result of a HSI nomination). Most relevant jurisdictions in Australia require turtle excluder devices in their trawl fisheries to protect turtles. However, gill net fishing still poses a threat to these and other animals.

Dolphins are also caught as bycatch in Australian fisheries. The Australian Fisheries Management Authority has in place dolphin bycatch mitigation strategies for two of the Commonwealth fisheries it manages²²¹. HSI has criticised the strategies for not being sufficiently conservative to restrain the dolphin bycatch that has been occurring.

There has been progress to address the bycatch of the endemic and endangered Australian sea lion in South Australia and most recently Western Australia with the imposition of gillnet closures around the species colonies. South Australia also has management arrangements in place which are triggered by bycatch limits.

Seal bycatch happens in large numbers in Australia but it has been poorly monitored and is not quantified nor mitigated.

²²¹ <http://www.afma.gov.au/new-dolphin-mitigation-strategies-spf-sessf/>

9. Conclusions

As the breadth of this background briefing illustrates, there are not only a wide range of animal products that are traded between Australia and the EU, but also significant divergences between regulatory standards for farm animal welfare, wildlife protection and animal testing.

It is essential that the important issues outlined herein are given serious consideration by the negotiating Parties and that a high level of ambition is sought with respect to the protection of animals - both domesticated and wild - for the proposed trade agreement between the EU and Australia. This is an opportunity for both Parties to show global leadership with regard to the promotion of high standards of farm animal welfare, the protection of wildlife species and their natural habitats and to replace, reduce and refine the use of animals in research and product testing.

Humane Society International's own recommendations and suggestions with regard to issues and language that we advocate for inclusion in the agreement are outlined in detail in section 2 of this briefing. We hope that the Parties will take these into consideration while negotiating the agreement. As previously noted, the protection of animal welfare is an issue of public morality and should be recognised as a legitimate trade concern. Indeed, it has been established as a key principle that the Union should respect in its policymaking and is an issue that is important to citizens not just in the EU, but also Australia.

A progressive trade deal that pays due regard to the protection of animals – and influence positive changes for their lives on farms, in laboratories or in the wild - is therefore also more likely to receive a greater degree of public support than one that neglects these issues, or lacks ambition in this regard.

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ANNEX I: Overview of wildlife trade legislation in the EU and Australia

EUROPEAN UNION
Wildlife Legislation
<p>CITES is implemented in the EU through a set of Regulations known as the EU Wildlife Trade Regulations. Although these Regulations are directly applicable in all EU Member States, the necessary enforcement provisions must be transferred into Member State Legislation and supplemented with national laws. Member States are responsible for ensuring infractions are punished in an appropriate manner.</p>
<p><u>Council Regulation (EC) No 338/97</u> Provides the general legal framework and lays down the provisions for internal EU trade as well as import, export and re-export of specimens of species listed in the four Annexes of this regulation.</p> <p><u>Commission Regulation (EC) No 865/2006</u> Lays down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 and addresses practical aspects of wildlife trade regulation. It provides standard model forms that must be used for permits, certificates, notifications and applications for these documents as well as labels for scientific specimens. There are additional rules for the conditions for issuing these documents, their validity and use. Other subjects covered by this Regulation include provisions for animals born and bred in captivity, artificially propagated plants, personal and household effects and for the marking and labelling of certain specimens.</p> <p><u>Commission Regulation (EU) No 792/2012</u> Lays down rules for the design of permits, certificates and other documents provided for in the Basic Regulation on the protection of species of wild fauna and flora by regulating trade therein and amending the Implementation Regulation. This is known as the Permitting Regulation.</p> <p><u>Commission Implementing Regulation (EU) No 757/2012</u> Suspends the introduction into the Union of specimens of certain species of wild fauna and flora. Also known as the Suspensions Regulation. This is known as the suspensions regulation and is in place to suspend the introduction into the EU of particular species from certain countries.</p>
<p>EU Enforcement Action Plan Identifies actions for the enforcement of the Basic Regulation called the EU Enforcement Action Plan in a non-binding Recommendation. This sets out a number of actions for Member States for more effective enforcement of the Regulations.</p> <p><u>Articles 4 and 9 of Regulation (EC) No 338/97</u> Provide limited animal welfare requirements that apply to Annex A. The legislation requires that the competent scientific authority must be satisfied that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly. Moreover, it stipulates that “any live specimens are transported into, from or within the Community or are held during any period of transit or transshipment, they shall be prepared, moved and cared for in a manner such as to minimise the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with Community legislation on the protection of animals during transport.”</p> <p><u>Additional regulations related to trade in animals:</u></p> <p>Council Regulation (EC) No 318/2007 Passed to address the threat posed by H5N1 avian influenza and other avian diseases. This legislation limits the import of avian species to only captive bred birds that have implemented appropriate standards of disease prevention for birds in captivity.</p> <p><u>Regulation (EC) No 1007/2009</u></p>

Bans the trade in commercial seal products.

[Council Directive 92/43/EEC](#)

Prohibits the keeping, transport, sale or exchange of cetacean specimens taken from the wild and is known as the EU Habitats Directive.

[EU Regulation 1143/2014 on Invasive Alien Species](#)

Sets out rules to prevent and manage the introduction and spread of invasive alien species (IAS) in the EU. Legislation seeks to minimise and mitigate the adverse effects of IAS on EU biodiversity and ecosystems, as well as on human health and the economy.

AUSTRALIA

Wildlife Legislation

In Australia CITES is implemented At the federal level, and applies to all states primarily through the EPBC Act. There is no state based CITES legislation, as state wildlife legislation does not address international wildlife import/export. Australian state legislation deals only with domestic native wildlife import/export licensing.

Federal

[Environment Protection and Biodiversity Conservation Act 1999](#)

Part 13A of the EPBC Act deals with the international movement of wildlife specimens, and Division 2 relates directly to CITES species. It prohibits import and export of CITES I, II and III specimen generally, but also allows permits to be granted for certain action with CITES species under specific circumstances. Permits are granted where the action will not contribute to trade that is detrimental to the survival, recovery, or habitat of a CITES species. The Act also allows for declarations of stricter domestic measures beyond the species listed under CITES.

Other related legislation:

- [Customs Act 1901](#) - The *Customs Act* controls the import and export of prohibited goods to and from Australia. This includes endangered/CITES specimen.
- [Biosecurity Act 2015](#) – The legislative mechanism for managing biosecurity threats in Australia.
- [Therapeutic Goods Act 1989](#) – The TGA provides a mechanism for control of therapeutic goods and imports/exports of the same. The TGA does not have the power to deny listing or registration for products that contain CITES species, however the TGA is obliged to provide information to the Federal Department of Environment in relation to Therapeutic Goods that contain endangered species derivatives.

State

Australian native wildlife is protected at the state level insofar as domestic trade is prohibited without a valid permit from the regulator in that state.

ANNEX II: Comparison of EU and Australian animal welfare legislation

EUROPEAN UNION	AUSTRALIA
General (farm) animal welfare legislation	
<p><u>Council Directive 98/58/EC concerning the protection of animals kept for farming purposes</u></p> <ul style="list-style-type: none"> ▪ Applies to all animals (including fish, reptiles and amphibians) reared or kept for production of food, wool, skin or fur. ▪ States that animals should not be bred or fed in ways that may cause suffering. ▪ Animals must be looked after by sufficient number of staff with appropriate professional skills, knowledge and competence ▪ Animals must be inspected at least once a day. Injured or sick animals require immediate treatment and isolation if necessary. ▪ Establishes principle of freedom of movement. All animals, even when tethered, chained or confined, must have sufficient space to move without unnecessary suffering or injury. ▪ Sets down basic criteria for buildings, accommodation and living environment conditions. Animals must not be kept in permanent darkness or exposed constantly to artificial lighting. ▪ Establishes criteria for inspection of automatic or mechanical equipment, such as ventilation systems. ▪ Requires that animals be fed a wholesome and appropriate diet in sufficient quantities at regular intervals. All other substances prohibited unless for therapeutic or prophylactic reasons or zootechnical treatment ▪ Mutilations – defers to national rules ▪ Stipulates that rearing methods causing suffering or injury are prohibited unless impact minimal, brief or expressly allowed by national authorities. No animal to be kept on a farm if harmful to its health and welfare. ▪ Establishes criteria for inspection, reporting requirements and evaluation. 	<p>No Federal legislation re: Farm Animal Welfare.</p> <p>State prevention of cruelty legislation contains very little, if any, inherent farm animal welfare provisions. However some State legislation has rendered <u>national codes of practice</u> ('The Codes') enforceable, either in part or in their entirety. The codes each refer to specific types/classes of animal.</p> <p>At present <u>Animal Welfare Standards & Guidelines</u> are being developed to progressively replace The Codes. <u>Cattle</u> and <u>Sheep</u> Standards & Guidelines have been developed and are being progressively implemented.</p> <p><u>Land Transport Standards and Guidelines for Livestock</u> have been regulated in all states.</p> <p>NSW – <u>Prevention of Cruelty to Animals Act 1979 s34A</u></p> <ul style="list-style-type: none"> • Nothing inherently relating to farm animal welfare. • Regulations may prescribe guidelines relating to farm animal welfare, however Animal Welfare Advisory Council and livestock industry representatives may be given the opportunity to review/comment on the proposed legislation. Any guidelines made under this section are enforceable under the Act. • <u>Prevention of Cruelty to Animals Regulation 2012 reg33(1)</u> adopts the Codes as guidelines only besides in pig production (see below). <p>NT – <u>Animal Welfare Act:</u></p> <ul style="list-style-type: none"> • Nothing inherently relating to farm animal welfare. • <u>s24</u> allows adoption of codes of practice, however to date the Codes remain voluntary in NT. <p>VIC – <u>Prevention of Cruelty to Animals Act 1986</u></p> <ul style="list-style-type: none"> • <u>s6(1)(c)</u> and <u>s42(3)</u>: The legislation explicitly does not apply to farm animals insofar as they are in conflict with codes of practice. However the Codes are not legally enforceable. • <u>S7</u> allows the adoption of codes regarding any animal or class of animals. <u>None of the existing codes regarding farm animals are mandatory.</u> <p>QLD – <u>Animal Care and Protection Act 2001</u></p> <ul style="list-style-type: none"> • <u>Animal Care and Protection Regulation 2012</u> – some sections of this require compliance with various codes of practice (Pigs and Livestock Transport only). <p>ACT – <u>Animal Welfare Act 1992</u></p> <ul style="list-style-type: none"> • <u>S22</u> – The Codes are approved under this section (yet again, are not mandatory). <p>WA – <u>Animal Welfare Act 2002</u></p> <ul style="list-style-type: none"> • <u>S84</u> – breach of a code of practice not sufficient to prove cruelty. • <u>S25</u> – Acting in accordance to a code is a defence for a cruelty to animals charge. • Codes for pigs, cattle, poultry and sheep have been integrated into the <u>Animal Welfare (General) Regulations 2003</u> they are <u>not enforceable.</u> <p>SA – <u>Animal Welfare Act 1985</u></p> <ul style="list-style-type: none"> • <u>s43</u>—Act does not render unlawful practices that are in accordance with prescribed code of animal husbandry practice.

	<ul style="list-style-type: none"> • Animal Welfare Regulations 2012 –contains enforceable codes and Standards & Guidelines in relation to people who control: <ul style="list-style-type: none"> ○ Animals in slaughtering facilities ○ Transport of animals ○ Cattle ○ Sheep <p>TAS – Animal Welfare Act 1993</p> <ul style="list-style-type: none"> • S50(4) Regulations may be made to incorporate a code. So far this has only been done for pigs (in terms of farm animals), however voluntary have been approved under the act and can be found here.
Pigs	
<p>Council Directive 2008/120/EC laying down minimum standards for the protection of pigs</p> <ul style="list-style-type: none"> ▪ Legislation adopted in 2001. Fully entered into force on 1st January 2013. ▪ Applies to all categories of pigs kept for breeding, rearing and fattening. ▪ With exception of farrowing sows and boars, all animals must be kept in stable groups (except before and during week after weaning). ▪ Farmers must implement measures to fulfil basic needs and prevent aggression in group. This includes permanent access to sufficient enrichment materials to enable investigation and manipulation activities. ▪ Aggressive and injured animals to be kept away from group. ▪ Tethering of sows prohibited, and use of sow stalls (gestation crates) after first 4 weeks of pregnancy. ▪ Animals must be treated for external and internal parasites when necessary ▪ Sows and gilts may be isolated a week before farrowing with an unobstructed area for natural or assisted farrowing. Farrowing pens must have systems to protect piglets. ▪ Veterinarians or trained personnel are authorised to: reduce piglets' canine teeth, dock tails, castrate males and nose-ring pigs in outdoor systems. ▪ Both tail-docking and teeth cutting may not be done routinely, but restricted to when there is evidence of injury to sows' teats or other pigs' ears/tails. Other preventative measures to reduce biting behaviour must be taken first. ▪ Establishes feeding standards, including permanent access to water. ▪ Sets down standards on flooring according to weight of animal. Floors must not be slippery to prevent injury to animals ▪ Establishes noise and light intensity limits ▪ Establishes the inspection regime ▪ Member States may apply stricter provisions 	<p>QLD - Animal Care and Protection Regulation ('ACPR') 2012 – some sections of this require compliance with various codes of practice.</p> <ul style="list-style-type: none"> ○ Code of Practice for Transport of Livestock (entirely compulsory). ○ Model code of Practice for the Welfare of Animals (Pigs) – Partially compulsory. Compulsory sections are incorporated into Schedule 2 of the ACPR. This sets out: <ul style="list-style-type: none"> ▪ Husbandry procedures to be performed by vets or listed qualified persons. ▪ Administration of medicine and vaccines by injection by qualified persons only. ▪ Surgical sterilisation of male pigs over 3 weeks old by vets or trainees under vet supervision. ▪ Pigs are to be killed by qualified persons only. ▪ Pigs must have access to adequate food once daily (twice if weaning). ▪ Access to adequate water at all times. ▪ Pigs must have housing adequate to protect from adverse weather, injury and predators. ▪ Floor sizes for various types of pigs. ▪ Requirements and sizes for all pig stalls. ▪ Requirements and sizes for all farrowing crates. ▪ Boars must be released from stalls for mating and exercise. ▪ Pig keeping equipment must be inspected daily. ▪ A risk management system must be established and implemented in the event that essential equipment malfunctions or there is a delay in the supply of food or water. ▪ Health of pigs must be inspected daily. ▪ Appropriate measures must be taken to ensure heard health and the health management of any sick pigs. ▪ Piglets must be checked within 24 hours of birth to ensure it is feeding. ▪ Where a sow dies, and its piglet has not been receiving adequate nutrition the piglet must be fostered, weaned, hand-reared, or killed. ▪ A sow fostering additional litter. ▪ Sterilisation of male pigs may only be carried out by a surgical sterilisation procedure or an immunecastration procedure. Anaesthetic must be used on pigs over 3 weeks of age. ▪ Pigs may not be restrained my tethering. ▪ Electric prodding devices and dogs may not be used to move pigs. ▪ Pigs must be killed in a way that causes rapid unconsciousness and immediate death, and is otherwise humane. <p>VIC – Victorian Standards and Guidelines for the Welfare of Pigs are compulsory (in part, the standards are enforceable and guidelines are not although contained in the same</p>

	<p>document) and based on the Model code of Practice for the Welfare of Animals (Pigs). The standards are as follows:</p> <ul style="list-style-type: none"> • Pigs must be cared for by suitably qualified individuals and in accordance with the standards. • Pigs must have daily access to food that meets their physical and mental requirements (weaners twice daily). Any bullying preventing consumption of food must be remedied. • Automatic feeders checked daily. • Body condition of pigs must be scored and kept above "2". • Drinking water must be readily available, any preventative bullying must be remedied, and automatic feeders checked daily. • Sets out housing standards that prevent risk to pigs from weather, injury or adverse weather. • Essential equipment checked daily. • Equipment to which the pigs have access must be designed to minimise risk of injury. • Risk management system must be implemented. • Automatic ventilation systems must have backup systems and equipment in the event of failure. • Ventilation must be inspected twice daily, and have a warning alarm for the instance of failure. • Electrical installations at mains voltage must be inaccessible to pigs and properly earthed. • Stock-persons must use lighting that enables inspection of all pigs. • Ventilation must prevent accumulation of harmful concentrations of gases. • Action must be taken to detect and cool heat distressed pigs. • Outlines fire prevention actions. • Preventative measures must be implemented for protection of pigs from predators. • Faeces and urine must not be permitted to accumulate to the stage where there is no clean area for pigs to lie down. • Pigs must have access to weather appropriate shelters in safe, uncontaminated areas and access to food and water. • Pigs must be inspected at least once daily by a qualified person. • Appropriate measures for the health and disease management of pigs are set out. • Piglets must be checked within 24 hours of birth to ensure they are feeding and, where a sow cannot appropriately care for the piglet, the piglet must be fostered, weaned, hand reared or euthanised. • Sets out situations where electric prodders and dogs may be used to move pigs. • Elective husbandry procedures can be performed by qualified persons. • Surgical sterilisation must not be performed on a male pig over 21 days of age unless done under anaesthesia by a vet. • The method of destruction must cause a sudden unconsciousness with death occurring when unconscious, and must be done by a qualified person. <p>SA – Animal Welfare Regulations 2012 – Part 6</p>
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	<ul style="list-style-type: none"> Records of inspections of pigs and equipment must be kept. Pig must be given adequate food and reasonable access to water. Within 24 of birth piglet must be ensured to have received colostrum or appropriate substitute. Pig must be inspected daily to ensure well-being. Reasonable steps must be taken to prevent build-up of faeces and urine in pig housing. Pig must not be tethered. Pig must not be exposed to dogs unless under effective control of a person and wearing a muzzle (if there is a history of biting). Persons responsible for pigs must be suitably qualified/supervised by one who is suitably qualified. A herd health program must be in place. Medical/surgical procedures must be carried out by qualified persons (unless circumstances are urgent). vasectomy or surgical castration is not to be performed on a pig over 21 days of age unless the pig is anaesthetised. Sets out housing standards. Electronic ventilation to be inspected twice daily and fitted with a failure alarm. A back up system must also be provided. Housing must be equipped with feeder and waterer that do not pose injury and, where appropriate, a back-up system must be implemented. Essential equipment must be inspected daily. Ensure that electrical installations of mains voltage are properly earthed and inaccessible to the pig. <p>TAS – Animal Welfare (Pigs) Regulations 2013</p> <ul style="list-style-type: none"> Similar to above three state examples. <p>NSW – Animal Welfare Code of Practice – Pig Production</p> <ul style="list-style-type: none"> Similar as above. <p>NT – None (only guidelines in the Codes).</p> <p>ACT – None (only guidelines in the Codes).</p> <p>WA – None (only guidelines in the Codes).</p>
Laying hens	
<p>Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens</p> <ul style="list-style-type: none"> Bans the use of un-enriched battery cages. Fully entered into force on 1st January 2012. For alternative systems - establishes permitted feeding and drinking systems giving space for each hen All alternative systems must have one nest space for every 7 hens, adequate perches (15cm per hen) and littered area (minimum 250 cm² per hen) Floors must support forward-facing claws of each foot Establishes special provisions for systems for free-range hens and access to outside runs. All enriched cages must ensure each hen has 750 cm², a nest, sufficient litter to peck and scratch, appropriate perches of at least 15 cm. Feeding troughs that can be used without restriction, appropriate drinking systems. Cages must be fitted with suitable claw-shortening devices. Establishes also a minimum aisle width (90 cm) and space between cages & between floor and bottom tier (minimum 35 cm); 	<p>In all jurisdictions the non-mandatory Model Code of Practice for the Welfare of animal: Domestic Poultry applies. Codes may be relied on as a defence to breaches of animal welfare regulation, whether they are compulsory or not.</p> <p>Animal Welfare Standards & Guidelines for poultry are currently in development.</p> <p>ACT – Some enforceable regulation contained in the Animal Welfare Act 1992 s9A and 9C</p> <ul style="list-style-type: none"> No battery cages No debeaking <p>Transport of chickens regulated (and enforceable) Land Transport Standards and Guidelines for Livestock in all states besides the ACT.</p>

<ul style="list-style-type: none"> Legislation does not apply to establishments with fewer than 350 laying hens or those rearing breeding animals Establishes system for traceability of eggs Establishes inspection regime Member States may apply stronger provisions 	
Chickens kept for meat production	
<p><u>Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production</u></p> <ul style="list-style-type: none"> All chickens must have adequate access to a litter tray, drinking channel and food, Buildings must have adequate lighting and ventilation, and must be inspected twice daily. Seriously injured chickens or those in poor health must be immediately treated or culled. Non-therapeutic surgical procedures prohibited, but beak trimming and castration permitted in certain cases. Establishes requirements for detailed record-keeping, including mortality. Competent authorities must follow-up and take appropriate action if post-mortem inspections indicate poor welfare on farm. Legislation does not apply to holdings with fewer than 500 chickens or those housing only breeding stock Sets maximum stocking densities (not exceeding 33 kg/m²) to avoid overcrowding. High density (max. 42 kg/m²) permitted if additional criteria are met. All holdings must be equipped with ventilation, heating and cooling systems. Staff must receive training on stocking densities, animal physiology, handling chickens and providing emergency care, plus preventative biosecurity. 	<p>As above with Laying Hens.</p>
Sheep	
<p>No species-specific EU legislation to protect sheep. Provisions of Council Directive 98/58/EC apply</p>	<p><u>Australian Animal Welfare Standards and Guidelines for Sheep</u>- legally enforceable in SA (<u>Animal Welfare Regulations 2012</u>), and incorporated under the <i>Prevention of Cruelty to Animals Act 1979</i> in NSW as non-mandatory guidelines. Voluntary elsewhere.</p> <p>SA – Animal Welfare Regulations 2012</p> <ul style="list-style-type: none"> Reasonable steps must be taken to minimize risk of harm to sheep from extreme weather conditions, disease and injury. Sheep must be inspected to assess health and wellbeing Must shear sheep at least once every 2 years Must not grind sheep teeth or carry out pizzle dropping Buildings, yards, enclosures, paddocks etc used for the handling and keeping of sheep must be suitable for the purpose so as to minimize risk of injury to the sheep. Dogs can only be used in the control handling of movement of sheep if the dog is under effective control at all time and wearing a muzzle (if there is a history of biting) Tail docking must not be carried out on sheep over 6 months of age unless it is being given analgesic and its treated to control hemorrhaging . The tail must be left with 1 palpable free joint.

	<ul style="list-style-type: none"> • Castration must not be carried out on sheep over 6 months of age without analgesic and hemorrhaging treatment. • Mulesing cannot be carried out on sheep less than 24 hrs old or more than 12 months old. Only wool bearing skin can be removed from sheep in good body condition and with analgesic. • Only veterinary surgeons may carry out laparoscopic insemination • Sheep kept in intensive sheep production must be: <ul style="list-style-type: none"> ○ Inspected once per day ○ Adequately fed each day ○ Given access to water each day ○ Kept in housing with adequate ventilations ○ Able to lie down on their sternums ○ Not kept in a single pen on a permanent basis. <p>In addition to these legally imposed regulations in SA, the remainder of the non-mandatory Sheep Standards and Guidelines state:</p> <ul style="list-style-type: none"> • Sheep must not be handled in an unnecessarily rough manner, lifted up by their extremities, struck, kicked, or dragged • Electric prodders must not be used in an unreasonable manner or on sheep less than 3 months old • Tethered sheep must be exercised daily • Artificial breeding procedures must not cause unreasonable pain, distress or injury to sheep • Action must be taken where sheep do not adapt to an intensive production system • Killing methods must ensure rapid loss of consciousness followed by death while still unconscious, and be carried out by a person with relevant knowledge. This is unless a sheep is suffering severe distress that cannot be treated, then a person must ensure the sheep is killed at the first reasonable opportunity. • Lambs must only be killed by a blow to the head where they are under 10kg and no firearm, captive bolt, or lethal injection is readily available. • Sheep must not be killed by bleeding out unless no firearm, captive bolt or lethal injection is reasonably available.
Calves	
<p><u>Council Directive 2008/119/EC laying down minimum standards for the protection of calves</u></p> <ul style="list-style-type: none"> ▪ Legislation bans the use of veal crates. ▪ Construction on pens must allow calves to lie down, rest, stand up and groom itself without difficulty ▪ Individual pens prohibited from 8 weeks of age, except in the event of illness. ▪ Before 8 weeks, individual pens must be constructed to allow visual and tactile contact between animals ▪ Stipulates space requirements for group pens relative to the weight of animals ▪ Calves must not be tethered (aside from bottle feeding for no longer than an hour) or muzzled 	<p><u>Australian Animal Welfare Standards and Guidelines for Cattle</u>- legally enforceable in SA (<u>Animal Welfare Regulations 2012</u>) and incorporated under the <i>Prevention of Cruelty to Animals Act 1979</i> in NSW as non-mandatory guidelines. Voluntary and pending implementation elsewhere. Note the below outlined code re: Cattle is applicable also to Calves.</p> <ul style="list-style-type: none"> • A person in charge must ensure the inspection of calving cattle at intervals appropriate to the production system and the level of risk to the welfare of cattle. Calving induction is to be done under veterinary advice. • A person in charge must ensure that induced calves receive adequate colostrum or be humanely killed at

<ul style="list-style-type: none"> ▪ Establishes flooring and bedding requirements. ▪ Calves must receive colostrum within 6 hours of birth and veterinary treatment given without delay in event of injury or illness ▪ Calves must be fed at least 2 times a day at same time as rest of group ▪ Diet must contain sufficient iron and be adapted to animal's age, weight, behaviour and psychological needs. Access to fresh water for all calves over 2 weeks old. ▪ Animals must be inspected at least 2 times a day and mechanical equipment once a day. Requirements also for back-up and alarm systems for artificial ventilation systems. ▪ Calves must be kept in conditions with natural or artificial light equivalent to period of natural light . ▪ Does not apply to calves kept with cow for suckling, or holdings with fewer than 6 calves. ▪ Establishes inspection requirements ▪ Imported calves from non-EU countries must be raised under equivalent conditions. ▪ Member States may apply stricter provisions. 	<p>the first reasonable opportunity, and before they are 12 hours old.</p> <ul style="list-style-type: none"> • A person in charge must ensure the feeding and inspection of calves in calf rearing systems are performed daily. • A person in charge must ensure that calves housed in pens can turn around, lie down and fully stretch their limbs. • A person in charge must ensure sufficient iron in the diet to prevent anemia in calves in veal production systems. • A person in charge must not allow the faeces and urine of calves housed in indoor systems to accumulate to the stage that compromises calf health and welfare. • A person in charge must ensure the appropriate management of calves born in the feed yards, to ensure the welfare of the calves. • A person killing a calf by a blow to the forehead must first ensure that the calf is less than 24 hours old and only use this method when no other humane killing methods are reasonably available.
Cattle	
<p>No species-specific EU legislation for dairy or beef cattle. Provisions of Council Directive 98/58/EC apply.</p> <ul style="list-style-type: none"> ▪ The permissibility of mutilations, such as tail docking, is determined by national Member States legislation. 	<p>Australian Animal Welfare Standards and Guidelines for Cattle- legally enforceable in SA (Animal Welfare Regulations 2012) and incorporated under the <i>Prevention of Cruelty to Animals Act 1979</i> in NSW as non-mandatory guidelines. Voluntary and pending implementation elsewhere.</p> <ul style="list-style-type: none"> • A person must take reasonable actions to ensure the welfare of cattle under their care. • A person in charge must ensure cattle have reasonable access to adequate and appropriate feed and water. • A person in charge must take reasonable actions to ensure the welfare of cattle from threats, including extremes of weather, drought, fires, floods, disease, injury and predation. • A person in charge must ensure the inspection of cattle at intervals, and at a level appropriate to the production system and the risk to the welfare of cattle • A person in charge must ensure appropriate treatment for sick, injured or diseased cattle at the first reasonable opportunity • A person in charge must take reasonable actions in the construction, maintenance and operation of facilities and equipment to ensure the welfare of cattle. • A person must handle cattle in a reasonable manner. • A person handling cattle must not lift, drop, strike, punch, kick, drag cattle. Nor can they break or dislocate tails or use metal pellets to wound during mustering. • A person must not drive cattle to the point of collapse. • A person must consider the welfare of cattle when using an electric prod, and must not use it on genitals, faces, or calves. • Dogs used must be under effective control at all times during the handling of cattle. Dogs must be muzzled when moving calves less than 30 days old that are without cows.

	<ul style="list-style-type: none"> • A person in charge must ensure tethered cattle are able to exercise daily • Electro-immobilisation can only be used on cattle over 6 months old by trained operators where alternative restraint methods are not adequate (in approved jurisdictions). It cannot be used as pain relief. • A person must use the most appropriate and least painful method to identify cattle that is applicable to the jurisdiction and the production system. Cattle must not be branded. • A person castrating or dehorning cattle must use appropriate tools and have the relevant knowledge, experience and skills. Appropriate pain relief must be used unless they are under 6 months old. • Chemical disbudding can only be done on calves under 14 days old. • A person must use appropriate tools and methods to dehorn cattle and disbud calves. • A person spaying a cow must be a veterinarian. The flank approach can only be used with appropriate pain relief. Vaginal spreaders are not to be used on small or immature cattle. • A person performing artificial breeding procedures on cattle must have the relevant knowledge, experience and skills, and must minimise pain, distress or injury. • Lactating dairy cows must be inspected daily. • Heat stress of cattle must be minimised. • Tail docking can only be performed to treat injury or disease. • Dairy cattle that are kept on feed pads for extended periods must have access to a well-drained area for resting. • Minimum area of 9 m² per Standard Cattle Unit for cattle held in external pens. • Diet composition and quantities fed must be recorded. Records should be maintained for the duration of the feeding period of each group of cattle. • Feed must be available daily to cattle in the beef feedlot. • Heat load risk assessments must be done each year, and appropriate actions to manage ongoing heat load risk undertaken. There must be an Excessive Heat Load Action Plan, which must be implemented in the event of a heat load emergency. • Contingency plans in case of failure of feed or water supply, as well as animal disease. • Daily inspection of all cattle within the feedlot. • Feed yards must be cleaned and maintained on a planned basis • Killing methods must result in rapid loss of consciousness, followed by death while unconscious, and be performed by a person with relevant knowledge, experience and skills to humanely kill cattle (unless unreasonable delay would cause suffering). • Cattle suffering from severe distress, disease or injury that cannot be reasonably treated must ensure that the cattle are killed at the first reasonable opportunity.
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	<ul style="list-style-type: none"> A person killing cattle must take reasonable action to confirm the animal is dead.
Ducks and geese	
<p>No species-specific EU legislation to protect ducks and geese. Provisions of Council Directive 98/58/EC apply.</p> <ul style="list-style-type: none"> Force-feeding for foie gras production is in contravention of this legislation that stipulates that animals should not be caused unnecessary suffering and injury, but should also be kept with respect to their physiological and ethological needs Foie gras production is banned explicitly or is deemed to violate national anti-cruelty laws in the Czech Republic, Denmark, Finland, Germany, Italy, Luxembourg, Poland, Sweden and UK. 	<ul style="list-style-type: none"> Not specifically legislated for, however are encompassed by the Model Code of Practice for the Welfare of Animals: Poultry. Note that transport of ducks and geese is covered by the legally enforceable Land Transport Standards and Guidelines for Livestock in all states besides the ACT.
Animals kept for fur production	
<p>No species-specific EU legislation concerning the protection of animals kept for the purposes of fur production. However, the provisions of both Council Directive 98/58/EC and Regulation (EC) No 1099/2009 apply to fur animals.</p> <ul style="list-style-type: none"> The United Kingdom and Austria have banned fur farming. Croatia, the Netherlands and Slovenia have adopted legislation banning and phasing-out fur farming. Fox and chinchilla farming were banned in the Netherlands in the 1990s and Denmark banned fox farming with a phase-out in 2009. 	<ul style="list-style-type: none"> No laws specifically regarding fur production. 4W of the Customs (Prohibited Imports) Regulations 1956 (Cth), the importation into Australia of cat or dog fur is prohibited.
Slaughter	
<p>Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing</p> <ul style="list-style-type: none"> Lays down rules for the killing of animals kept for production of food, wool, skin, fur, etc., as well as killing in emergencies and for the control of contagious disease. Introduces standard operating procedures for welfare of animals at slaughter. Operators must ensure animals spared as much pain, distress and suffering as possible. Requires evaluation of stunning methods used and monitoring to ensure animals do not regain consciousness before slaughter. Requires manufacturers of restraining and slaughter equipment to supply operators with information on species application and optimal use thereof. Requires appointment of an animal welfare officer in each slaughterhouse to ensure compliance with provisions of Regulation. Personnel dealing with live animals must have certificate of competence regarding knowledge of animal welfare. Member States are required to institute a system of scientific support to provide technical assistance. etc. Emergency plans for the control of contagious disease should give logistic procedures for slaughter to ensure full regard paid to animal welfare in event of depopulation measures. Establishes a list of stunning methods authorised for each species and the rules relating to their application. Includes derogations on slaughter without stunning for religious slaughter. 	<p>None.</p> <p>The codes may (e.g. Cattle Code above) prescribe circumstances surrounding slaughter, not the slaughter itself. (The codes do discuss the destruction/euthanasia of livestock).</p>
Transport	
<p>Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations</p> <ul style="list-style-type: none"> Legislation regulates the commercial transport of live vertebrate animals 	<p>Land Transport Standards and Guidelines for Livestock have been regulated in all states.</p> <ul style="list-style-type: none"> Responsibility for animals extends to all those involved in the journey (including immediately before and after).

<ul style="list-style-type: none"> ▪ Extends responsibility for animal welfare to all parties involved in process of transport, including operations before and after. ▪ Requires training and certification of competence for drivers and attendants, including a training course and exam on animal welfare. ▪ Transporters must have authorisation from competent authority for all journeys over 65km ▪ For journeys longer than 8 hours, documentation including contingency plans must be provided and proof of a satellite navigation system ▪ Transporters must have journeys for long-distance cross-border transports over 8 hours. ▪ Checks must be conducted by competent authorities at key stage of journey, including exit points and border posts. Authorities must verify documentation and an official veterinarian check the fitness of animals to continue journey. ▪ Stricter rules for both animals and vehicles apply to transports over 8 hours. This relates primarily to temperature controls, ventilation and water supply. ▪ Transport of very young animals over 100km prohibited, as well as females in last stages of gestation and during first week after birth. ▪ Requirement for individual stalls for horses during long journeys. ▪ Different journey times (between 9 and 24 hours) and rest periods apply to different species and their stage of development (e.g. un-weaned and adult). 	<ul style="list-style-type: none"> • Where a journey is expected to exceed 24 hours a record must be kept of the date and time the livestock last had access to water and inspections and any concerns. • A person involved in any part of the livestock transport process must be competent to perform their required task, or must be supervised by a competent person. • Vehicles used for transport must be constructed in a way so as to avoid risk to the welfare of livestock. • At every loading livestock must be inspected to ensure they are fit for the journey. If deemed unfit, they may only be transported under veterinary advice. Where assessed as unfit, the person in charge must make appropriate arrangements for the care, treatment or humane destruction of the animal at the first reasonable opportunity. • If maximum permitted time without water is reached (dependant on type of livestock) then a rest stop must be taken before the journey is to continue. • If records showing when livestock was last watered cannot be produced they must be given access to water at a livestock handling facility within 24 hours (less if applicable to species). • Drivers must assess loading density (ex. Poultry). • Driver must segregate livestock appropriately to reduce welfare risk. • Animals must be handled in a way that minimises pain or injury. • Electric prodders must not be used unless permitted in that species. • Dogs must be controlled during all stages of the journey, must not travel with the livestock, and be muzzled if there is a history of biting. • Ramps must be properly aligned and gaps narrowed to avoid injury. • Inspections are to be made at each stop. • If animals are injured or distressed assistance must be sought by the driver at the first reasonable opportunity. • Steps must be taken to avoid the effects of extreme weather conditions during the journey. • Upon receipt of livestock, receiver must make appropriate arrangements to deal with injured or weakened livestock. • Where necessary, livestock that need to be destroyed may be done so by suitable persons (where possible), by humane methods resulting in rapid unconsciousness and death. • Blunt force trauma may be used to kill an animal if they are either a piglet up to 15 kg live weight or is less than 24 hours old and of the following species — alpacas, camels, cattle, deer, goats and sheep. • Deer, goats or sheep must only be destroyed by bleeding-out by neck cut where no firearm or captive bolt available. • Part B sets out species specific information.
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ANNEX III: Overview of EU and Australian legislation relating to the protection of animals used for scientific and research purposes

EUROPEAN UNION	AUSTRALIA
General legislation relating to the protection of animals used for scientific and research purposes	
<p><u>Directive 2010/63/EU on the protection of animals used for scientific purposes</u></p> <ul style="list-style-type: none"> The Directive establishes measures for the protection of animals used for scientific or educational purposes The Directive applies to (a) live non-human vertebrate animals, including: (i) independently feeding larval forms; and (ii) foetal forms of mammals as from the last third of their normal development; and (b) live cephalopods. The Directive lays down rules on: <ul style="list-style-type: none"> the replacement and reduction of the use of animals in procedures and the refinement of the breeding, accommodation, care and use of animals in procedures; the origin, breeding, marking, care and accommodation and killing of animals; the operations of breeders, suppliers and users; the evaluation and authorisation of projects involving the use of animals in procedures The Directive mandates the 3Rs principles (Replacement, Reduction, and Refinement of the use of animals) (article 4) Animals that are killed must be killed by a competent person with minimum pain, suffering and distress (article 6). Annex IV prescribes methods for the killing of animals, including species-specific restrictions and requirements such as prior sedation Restricts the use of endangered species in procedures (article 7) Restricts the use of non-human primates in procedures (article 8) Prohibits the use of great apes in procedures (article 8(3) and 55(2)) Prohibits animals taken from the wild being used in procedures (unless an exemption is granted on the grounds that the purpose of the procedure could not be achieved by the use of an animal which has been bred for use in procedures (article 9) Prohibits the use of stray and feral animals of domestic specie in procedures (unless an exemption is granted on the grounds that the procedure can only be achieved by the use of a stray or feral animal, or there is an essential need for the study, or there are serious threats to the environment or to human or animal health) (article 11) <p><i>Procedures</i></p> <ul style="list-style-type: none"> Procedures must be carried out in a user's establishment unless an exemption is granted on the basis of scientific justification (article 12) Mandates that a procedure must not be carried out if another method or testing strategy for obtaining the result sought, not entailing the use of a live animals, is recognised under EU legislation (article 13) Death-as-endpoint of a procedure should be avoided as far as possible and replaced by early and humane end-points (article 13(3)) 	<ul style="list-style-type: none"> No animal welfare legislation exists at the federal Commonwealth level due to animal welfare being regulated at the state and territory level. The import and export of animals, including those used for scientific purposes, is subject to Commonwealth legislation Aside from in NSW, state and territory animal welfare legislation contain limited provisions relating specifically to the protection of animals used for scientific and research purposes Instead, the non-statutory <i>Australian code for the care and use of animals for scientific purposes</i> (8th edition, 2013) is incorporated into relevant state or territory legislation in order to be enforced. The Code may be adopted in whole or in part, or not at all. Compliance with the Code is also required for any research that is funded by the National Health and Medical Research Council (NHMRC) Some States and Territories also produce their own Codes of Practice that are made under their respective animal welfare legislation. This includes Codes of Practice which establish minimum standards related to the housing and care of animals (such as the Code of Practice for the Housing and Care of Laboratory Mice, Rats, Guinea Pigs and Rabbits [VIC]) for a particular jurisdiction. Systems for registering institutions and licensing animal use for research and teaching vary between jurisdictions. Annual animal use statistics are required in some states and territories and are not collated or published at the federal level. <p><i>State and Territory legislation (and relevant sections) relating to the use of animals for scientific and research purposes</i></p> <ul style="list-style-type: none"> Victoria: Prevention of Cruelty to Animals Act 1986 - § 25-36 Prevention of Cruelty to Animals Regulations 2008 - § 90-102 New South Wales: Animal Research Act 1985 Animal Research Regulations 2010 Northern Territory: Animal Welfare Act - § 29-55 Animal Welfare Regulations Western Australia: Animal Welfare Act 2002 - § 6-18 Animal Welfare (Scientific Purposes) Regulations 2003 South Australia:

<ul style="list-style-type: none"> Procedures must be carried out under general or local anaesthesia, with analgesia to ensure pain, suffering and distress are kept to a minimum, unless inappropriate (article 14) Animals must not be given any drugs to stop or restrict their showing pain without an adequate level of anaesthesia or analgesia (article 14(3)) Pre-emptive and post-operative analgesic or other pain-relieving methods should be used (article 14(4)) Procedure severity must be classified according to criteria set out in Annex VIII, and procedures should not be performed if involving severe pain, suffering or distress that is likely to be long-lasting and cannot be ameliorated (article 15) Restricts the reuse of animals in procedures (article 16) Requires MSs to facilitate the establishment of programmes for the sharing of organs and tissues of animals killed (article 18) Animals used or intended to be used in procedures may be rehomed or returned to a suitable habitat (article 19) and appropriate socialisation or rehabilitation programmes must be put in place (article 29) 	<p>Animal Welfare Act 1985 - § 16-22 Animal Welfare Regulations 2012</p> <ul style="list-style-type: none"> Australian Capital Territory: Animal Welfare Act 1992 - § 25-50 Animal Welfare Regulations 2001 Queensland: Animal Care and Protection Act 2001 - § 48-93 Tasmania: Animal Welfare Act 1993 - § 27-35 Animal Welfare (General) Regulations 2013 <p><u>Australian code for the care and use of animals for scientific purposes (8th edition, 2013)</u></p> <ul style="list-style-type: none"> The Code applies to the care and use of all live non-human vertebrates and cephalopods.
<p><i>Requirements for breeders, suppliers and users</i></p> <ul style="list-style-type: none"> One or more competent authorities responsible for implementation of the Directive must be designated by each MS (article 59) Breeders, suppliers and users must be authorised by and registered with a competent authority and comply with the requirements of the Directive (articles 20 and 21) Housing of animals and performance of procedures must comply with 3Rs principles and requirements set out in Annex III (article 22) The Directive sets out minimum standards for housing and care of animals, such as daily checks of environmental conditions where animals are bred, kept or used; restrictions on animals' ability to satisfy physiological and ethological needs must be kept to a minimum; avoidable pain or suffering must be eliminated as quickly as possible; and animals must be transported under appropriate conditions (article 33), as set out in Annex III. Annex III (Section A) includes requirements: <ul style="list-style-type: none"> related to cleaning, ventilation and temperature, lighting, noise, and alarm systems. Animals must be checked at least daily by a competent person (3.1(b)) Animals should be socially housed unless naturally solitary. Where single housing is allowed it must be for the minimum period necessary and visual, auditory, olfactory and/or tactile contact must be maintained (3.3(a)) Enrichment must be provided with space of sufficient complexity to allow expression of a wide range of normal behaviour (3.3(b)) Animal enclosures must be well designed and constructed and be appropriate for the species and age of the animals (3.3(c)) Animals must have access to food that meets nutritional and behavioural needs, with sufficient feeding space (3.4) Animals must have access to uncontaminated drinking water (3.5) Comfortable, clean and dry resting/sleeping areas must be provided, including nesting materials or structures for breeding animals (3.6) Annex III (Section B) outlines species-specific information relating to enclosure requirements, including minimum floor area and height <ul style="list-style-type: none"> Cats must not be single-housed for more than 24 hours at a time (unless cats are repeatedly 	<p><i>Governing Principles</i></p> <ul style="list-style-type: none"> Respect for animals must underpin all decisions and actions involving the care and use of animals for scientific purposes (clause 1.1), demonstrated by using animals only when it is justified; supporting the wellbeing of the animals involved; avoiding or minimising harm, including pain and distress, to those animals; and applying high standards of scientific integrity. The 3Rs (Replacement, Reduction, and Refinement of animal use) must be considered at all stages of animal care and use, including the planning, conduct, and review of projects (clause 1.1 [v] and clauses 1.18 – 1.30) The care and use of animals for scientific purposes must be subject to ethical review (clause 1.2) The use of animals must be justified; specifically, an animal ethics committee (AEC) must be satisfied that there is sufficient evidence to support the case that the proposed use of animals is justified (clauses 1.5-1.7) The wellbeing of animals must be considered and supported at all stages of care and use (clause 1.8) Requires methods are used in accordance with current best practice (clauses 1.9 and 1.16) Harm, including pain and distress, to animals must be avoided or minimised (clauses 1.10-1.14) Death as an endpoint must be avoided unless it is essential for the aim(s) of the project (clause 1.13) Prompt action must be taken to alleviate pain and distress that were not anticipated, and this must take precedence over the continuation or completion of the project or activity (clause 1.14) Replacement techniques must be considered before the use of animals is considered (clause 1.19) Opportunities to replace the use of animals must be kept under review during the lifetime of a project (clause 1.20) All activities, including projects, that involved the care and use of animals for scientific purposes must (clause 1.32):

<p>aggressive towards other cats and a compatible companion cannot be found)</p> <ul style="list-style-type: none"> ○ Dogs should wherever possible be provided with outside runs ○ Dogs shall not be singled-housed for more than 4 hours at a time ○ Young non-human primates shall not be separated from their mothers until they are 6-12 months old ○ Adequate water supply and quality must be provided at all times for fish, and must allow fish to swim correctly and maintain normal behaviour <ul style="list-style-type: none"> • Staff must be adequately educated and trained (article 23) • Each breeder, supplier and user must have a designated veterinarian or suitably qualified expert to advise on the well-being and treatment of the animals (article 25) • Each breeder, supplier and user must set up an animal welfare body (article 26) which advises staff on animal welfare matters in relation to acquisition, accommodation, care and use of animals, the applications of the 3Rs principles, reviews internal animal welfare monitoring and reporting processes, monitors the development and outcome of projects, and provides advice on rehoming schemes (article 27) • Requires breeders of NHPs to have a strategy in place to increase the proportion of animals that are the offspring of NHPs that have been bred in captivity (article 28) • Breeders, suppliers and users must keep records including the number and species of animals bred, acquired, supplied, used in procedures, set-free or rehomed; the origin of the animals; the number and species if animals which died or were killed, including cause of death; and the projects in which animals are used, among other details (article 30) • Prescribes additional identification and information that must be kept on each dog, cat, and non-human primate that are bred, supplied or used (articles 31 and 32) <p><i>Inspections</i></p> <ul style="list-style-type: none"> • Requires regular risk-based inspections of at least one third of users each year, with breeders, suppliers, and users of NHPs inspected at least once a year, and a proportion of inspections carried out without prior warning (article 34) <p><i>Project Requirements</i></p> <ul style="list-style-type: none"> • Projects must not be carried out without prior authorisation from the competent authority (article 36) • Systematic project evaluation is required, including assessment of compliance with 3Rs principles and of pain, suffering distress and lasting harm caused to the animals (article 38) • Retrospective assessments should be carried out to evaluate whether the objectives of the project were achieved, actual severity of procedures, and any elements that may contribute to implementation of the 3Rs. All projects classified as severe or involving NHPs must undergo a retrospective assessment (article 39) • Non-technical project summaries must be included in applications for project authorisation, which demonstrate the project objectives, predicted harm and benefits, number and types of animals to be used, and compliance with 3Rs principles. Anonymised non-technical summaries must be published for all authorised projects (articles 37 and 43) <p><i>Avoidance of duplication and alternative approaches</i></p>	<ul style="list-style-type: none"> ○ Be subject to ethical review, approval and monitoring by an AEC ○ Commence only after approval has been granted by an AEC ○ Be conducted in accordance with the AEC approval ○ Cease if approval from the AEC is suspended or withdrawn <p><i>Responsibilities of Institutions</i></p> <ul style="list-style-type: none"> • Institutions must ensure, through the operation of an AEC, that all activities involving the care and use of animals comply with the Code, promote compliance with the Code, and must regularly monitor and review compliance (clause section 2.1) • Institutions that establish an AEC must conduct an annual review of the operation of the AEC (clause 2.2.1[v] and clause 2.2.37) • AECs must be comprised of at least four people, including a person with qualifications in veterinary science, a suitably qualified person with experience in the use of animals for scientific purposes; a person with demonstrable commitment to and established experience in furthering the welfare of animals who is not employed or associated with the institution; and a layperson who has never been involved in the use of animals in scientific or teaching activities (clause 2.2.4) <p><i>Responsibilities of Animal Ethics Committees</i></p> <ul style="list-style-type: none"> • Animal Ethics Committees (AECs) must ensure, on behalf of the institution for which it acts, that all activities relating to the care and use of animals are conducted in compliance with the Code (2.3.1) • This must include inter alia reviewing applications for projects and activities associated with the care and management of animals in facilities such as breeding programs; monitoring the care and use of animals; taking action regarding unexpected adverse events; taking actions regarding non-compliance; approving guidelines, and providing advice and reporting to the institution • AECs monitor the care and use of animals by inspecting animals, animal housing and the conduct of procedures, and/or reviewing records and reports (clause 2.3.17) • AECs should determine the frequency and timing of inspections as part of their monitoring of the care and use of animals (2.3.21) <p><i>Responsibilities of Investigators</i></p> <ul style="list-style-type: none"> • ‘Investigators’ are considered to be the researchers, teachers, undergraduate and postgraduate students involved in research projects, and people involved in product testing, environmental testing, production of biological products and wildlife surveys. • Before commencing a project, investigators must submit an application to the AEC and receive written approval from them (clause 2.4.10) • Investigators have personal responsibility for all matters that relate to the wellbeing of animals that they use, including their housing, husbandry, and care (clause 2.4.1)
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<ul style="list-style-type: none"> • Mandates data sharing to avoid duplication of procedures (article 46) • Requires the Commission and MSs to contribute to the development and validation of alternative approaches, and to promote alternative approaches and the dissemination of information (article 47) • Establishes a Union reference laboratory for the validation of alternative methods supported by laboratories within Member States (article 48 and Annex VII) • Annexes of the Directive must be updated to reflect technical or scientific progress (article 50) • The Directive must be reviewed to take into account advancements in the development of alternative methods (in particular of NHPs) and amendments proposed where appropriate (article 58) <p><i>Reporting</i></p> <ul style="list-style-type: none"> • MS are required to 'collect and make publicly available, on an annual basis, statistical information on the use of animals in procedures, including information on the actual severity of the procedures and on the origin and species of non-human primates used in procedures', with a common format for submitting information (article 54) • The Commission must publish a summary report of statistical information compiling MS data on animals used in procedures in the EU - for the first time in November 2019 and then every 3 years thereafter (Article 57(2)) • The Commission must publish a report on the implementation of the Directive - for the first time in November 2019 and then every 5 years thereafter (Article 57(1)) 	<ul style="list-style-type: none"> • Investigators must only consider using animals when they are satisfied that a case can be made that the proposed use is ethically acceptable, including balancing whether potential benefits justify potential effects on the wellbeing of the animals involved (clause 2.4.2) • Investigators must apply the principles of the Code in all aspects of the care and use of animals, including planning, conducting, and reviewing projects (clause 2.4.4) • Investigators must continually consider how to apply the 3Rs (clause 2.4.19) • Investigators must use humane procedures for killing an animal (clause 2.4.22) • Investigators should ensure that, if practicable, tissue samples from animals that have died or been humanely killed are provided or made available to other investigators for their work, or deposited in a tissue bank for subsequent distribution (clause 2.4.24) • For projects involving xenotransplantation, investigators must ensure that measures are in place to minimise the potential for xenosis (clause 2.4.29) • Investigators must maintain records of the care and use of animals (2.4.30) • Investigators must provide to the AEC an annual report for an approved project; a final report on outcomes of a project; prompt notification of unexpected adverse events; and reports on the creation and maintenance of genetically modified animals (clause 2.4.34). <p><i>Responsibilities of Animal Carers</i></p> <ul style="list-style-type: none"> • Lays out responsibilities of people involved in the care of animals that are used for scientific purposes, including during their acquisition, transport, breeding, housing and husbandry • Animal carers must apply the principles of the Code in all aspects of the care of animals and undertake activities in accordance with the conditions and requirements of approval from an AEC (clause 2.5.2) • The person responsible for the overall management of a facility used for breeding and holding animals ("the facility manager") must be competent, with appropriate animal care or veterinary qualifications or experience • The facility manager must apply for and obtain written approval from an AEC for all activities in the facility including procedures applicable to breeding programs (clause 2.5.15) <p><i>Animal wellbeing, care and management</i></p> <ul style="list-style-type: none"> • The living conditions in indoor facilities in which animals are bred, held, and used must be checked daily (clauses 3.1.7 and 3.2.17) • Wildlife must not be taken from their natural habitats or otherwise disturbed unless it is essential for the work proposed and no alternative source of animals or data is available (3.2.4) • Methods and arrangements for the transport of animals must support and safeguard the wellbeing of animals before, during, and after their transport (3.2.5) • Animals must be provided with accommodation, physical and social environmental conditions, food, water, and care to meet species-specific or
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	<p>strain-specific physical and behavioural needs (3.2.13)</p> <ul style="list-style-type: none"> • Facilities must be appropriate staffed, designed, constructed, equipped, maintained and managed to achieve a high standard of animal care (3.2.14) • Environmental factors such as air quality, temperature, humidity, light, and noise must be controlled within limits compatible with the health and wellbeing of the species held (3.2.17) • Pens, cages and containers must be constructed of safe, durable materials and kept clean, in good repair, etc (3.2.21) • The number of animals in, and placement of, cages, pens or containers should enable the social and environmental conditions for the species to be maintained (3.2.22) • If an animal of a species that normally lives in social groups must be housed in isolation or separated, the duration of such conditions must be minimised and the animals should be able to see, hear, and smell animals of the same species unless such contact is precluded by the requirements of the activity (3.2.23) • Animals must receive and be able to access appropriate, uncontaminated, nutritionally adequate food, and clean, fresh drinking water must be available at all times (3.2.24-3.2.25) <p><i>Procedures</i></p> <ul style="list-style-type: none"> • The Code (3.3) outlines how the wellbeing of animals may be supported and safeguarded during the conduct of specific procedures • Procedures must accord with current best practice and cause the least harm, including pain and distress, to the animals (3.3.1) • The use of local and general anaesthetics, analgesics and sedatives must be considered as part of a plan to manage pain and distress, and such use should at least parallel their use in current veterinary or medical practice (3.3.8) • Electroimmobilisation must not be used as an alternative to analgesia or anaesthesia (3.3.15) • The wellbeing of animals that have undergone surgical procedures must be supported and safeguarded (3.3.16) • Appropriate post-procedure care must be ensured (3.3.17-3.3.20) • For animals in studies that involve the induction of tumours, methods used and endpoints chosen must ensure that valid results are obtained with minimal harm, including pain and distress, to the animal (3.3.23) • Positive reinforcement should be used to motivate an animal to modify their behaviour or perform specific tasks (3.3.25) • Prolonged deprivation of water, food, social interaction or sensory stimuli must not be used to induce an animal to modify their behaviour (3.3.26) • Prescribes requirements in relation to wildlife and field techniques (3.3.33-3.3.44) • The method and procedures used for killing an animal must be humane and avoid pain or distress and produce rapid loss of consciousness until death occurs, among other requirement (3.3.45) <p><i>Provisions for animals at the conclusion of their use</i></p>
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	<ul style="list-style-type: none"> • Opportunities to rehome animals should be considered wherever possible (3.4.2) • The return of animals to normal husbandry conditions and the release of wildlife to their natural habitat must be in accordance with best practice (3.4.4) <p><i>Other</i></p> <ul style="list-style-type: none"> • Section 4 prescribes additional guidance on responsibilities relating to the care and use of animals in teaching activities • Institutions must have procedures for addressing complaints and non-compliance relating to the care and use of animals for scientific purposes (5.1) • Institutions must ensure that an independent external review is conducted at least every four years to assess the institution's compliance with the Code, and to ensure the continued suitability, adequacy and effectiveness of its procedures to meet its responsibilities under the Code (6.1) <p><u>Best practice methodology in the use of animals for scientific purposes (2017)</u></p> <ul style="list-style-type: none"> • Non-statutory guidance developed by the NHMRC with advice from its Animal Welfare Committee. The Guidance is intended to support the implementation of the Code • Compliance with the Guidance is only formally required if the research is funded by the NHMRC or compliance with the Guidance has been incorporated into the relevant state or territory legislation. • The Guidance aims to outline, in broad rather than prescriptive or detailed terms, best practice for the conduct of high quality animal-based studies, to highlight common flaws in methodologies employed in animal-based studies, and to provide practice strategies for implanting best practice methodology • The 3Rs underpin the framework for the ethical and humane use of animals and are also recognised as providing a structure and a tool for the conduct of high quality animal-based studies and the application of good scientific method (clause 1.2) • Encourages effective and transparent reporting of animal-based studies, including in order to avoid the unnecessary use of additional animals (clause 1.3) <p><u>Principles and guidelines for the care and use of non-human primates for scientific purposes (2016)</u></p> <ul style="list-style-type: none"> • Non-statutory principles and guidance developed by the NHMRC with advice from its Animal Welfare Committee. • Compliance with the non-statutory Principles and Guidelines is only formally required if the research is funded by the NHMRC or compliance with the Principles and Guidelines has been incorporated into the relevant state or territory legislation. • Lays out principles and guidelines on the care and use of non-human primates and provides additional information regarding the application of these principles
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	<ul style="list-style-type: none"> • Non-human primates must not be used for scientific purposes except when (part a, 1): <ul style="list-style-type: none"> i) no alternative to the use of non-human primates is suitable to achieve the stated aims of the project, and ii) the potential effects on the non-human primates are justified by the potential benefits. • Great apes must not be imported from overseas for use in scientific purposes (part a, 4) • The use of great apes for scientific purposes in Australia is permitted only when their use: (part a, 5) <ul style="list-style-type: none"> i) will not have any appreciable negative impact on the animals involved, e.g. observational studies ii) will potentially benefit the individual animal and/or their species • Prescribes restrictions and requirements related to the breeding of non-human primates and the Australian breeding colonies (part a, 12-14) • Non-human primates must be obtained from an established Australian breeding colony unless another source is approved by the AEC (part a, 16) • Non-human primates that are imported from overseas must be captive-bred (part a, 18) • Retirement must be considered as an option at the conclusion of the use of non-human primates (part a, 23) • Part B provides guidance on how the relevant principles in the Code may be met when caring for non-human primates
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