

Regulatory Capture and the Welfare of Farm Animals in Australia

Voiceless Animal Law Lecture Series

University of Sydney, 23 April 2013

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Another Bloody Business

Sarah Ferguson and Deb Masters
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Next on Four Corners, we bring you a story the live export industry doesn't want told.

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More footage has emerged allegedly showing Australian livestock being abused overseas.



7.30

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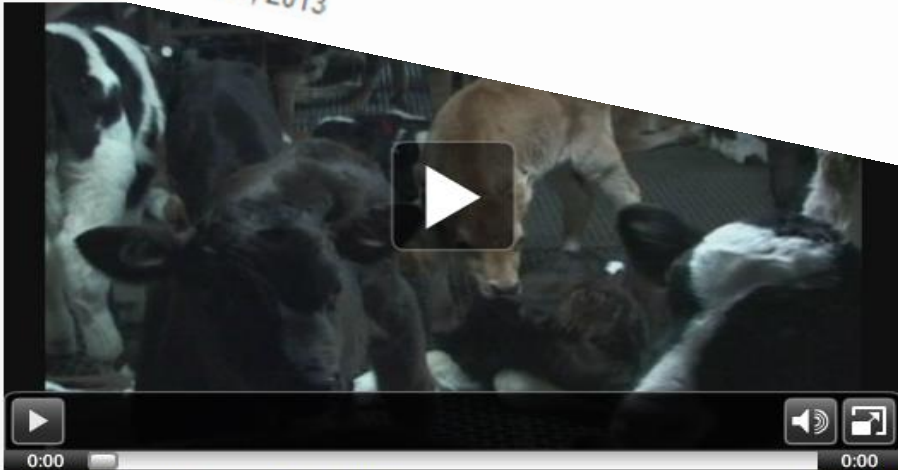
Disturbing footage prompts calls for duck farming changes

ABC NEWS

The Sydney Morning Herald
National

'Torture for fun': police given shocking abattoir footage

March 21, 2013



Australian Broadcasting Corporation
Broadcast: 01/02/2013
Reporter: Hamish Fitzsimmons

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been shut by state authorities following

g video

[P]ublic faith in Australia's animal welfare system has been undermined in recent years by revelation after revelation of cruelty to livestock...Departments of agriculture, including DAFF, are not widely regarded by the community or animal welfare groups as impartial when it comes to animal welfare.

- Melissa Parke MP, House of Representatives, 11 February 2013

The community is sick to death of this government treating animal welfare as a persistent nuisance and paying it only passing concern. The government has shown itself to be either incompetent or unwilling to police animal welfare or make the establishment of a sometimes talked about office of animal welfare a top priority. This would, I suggest, remove animal welfare from political and commercial self-interest

- Andrew Wilkie MP, House of Representatives, 13 February 2013

As long as animal welfare remains the responsibility of the Minister for Primary Industries, the interests of animals will play second fiddle to the interests of agribusiness which focus on maximising profits.

- Senator Lee Rhiannon, Press Release, 21 March 2013

[W]e need an independent office of animal welfare, an independent office that has no conflict of interest and no self-interest and that can set appropriate animal welfare standards for all animals in relation to breeding, transport and slaughter processes.

- Tony Zappia MP, House of Representatives, 20 March 2012

Regulatory Capture

Occurs when regulatory agency acts in the interests of the industry, firm, or individual it is regulating in a way that deviates from the public interest the regulation is designed to serve.

Regulatory Capture

[C]apture is said to occur if...quite independently of the formal or conscious desires of either the regulators or the regulated parties the basic structure of the reward system leads neither venal nor incompetent regulators inevitably to a community of interests with the regulated party.

- Barry Mitnick, *The Political Economy of Regulation*
(Columbia University Press, 1980)

Responsible institutions

State	Department
ACT	Territory and Municipal Services
NSW	Department of Primary Industries
NT	Department of Housing, Local Government and Regional Services
Qld	Department of Agriculture, Fisheries and Forestry
SA	Department of Environment and Natural Resources
Tas	Department of Primary Industries, Water and Environment
Vic	Department of Primary Industries
WA	Department of Agriculture and Food

Responsible institutions

“We promote profitable primary industries for Queensland. We provide expertise and support to assist the State’s food and fibre industries to increase productivity, improve sustainability, grow markets and adapt to change.”

“The Department of Food and Agriculture assists the State’s Agriculture, Food and Fibre sectors to be sustainable and profitable, with a clear focus on export-led growth.”

“The Department of Primary Industries works to develop and sustain diverse, profitable food and fibre industries, and ensure best practice management of our natural resources.”

“A progressive, innovative and profitable agriculture and food sector that benefits Western Australia.”

Responsible institutions

- Coordinated nationally through:
 - Commonwealth Department of Agriculture, Fisheries and Forestry

“[R]ole is to develop and implement policies and programs that ensure Australia's agricultural, fisheries, food and forestry industries remain competitive, profitable and sustainable.”
 - COAG Standing Council on Primary Industries:

“The Council will develop and implement policies and strategies for achieving agreed national approaches to biosecurity, productivity and sustainability of primary industries (including fisheries and forestry industries) and food security.”

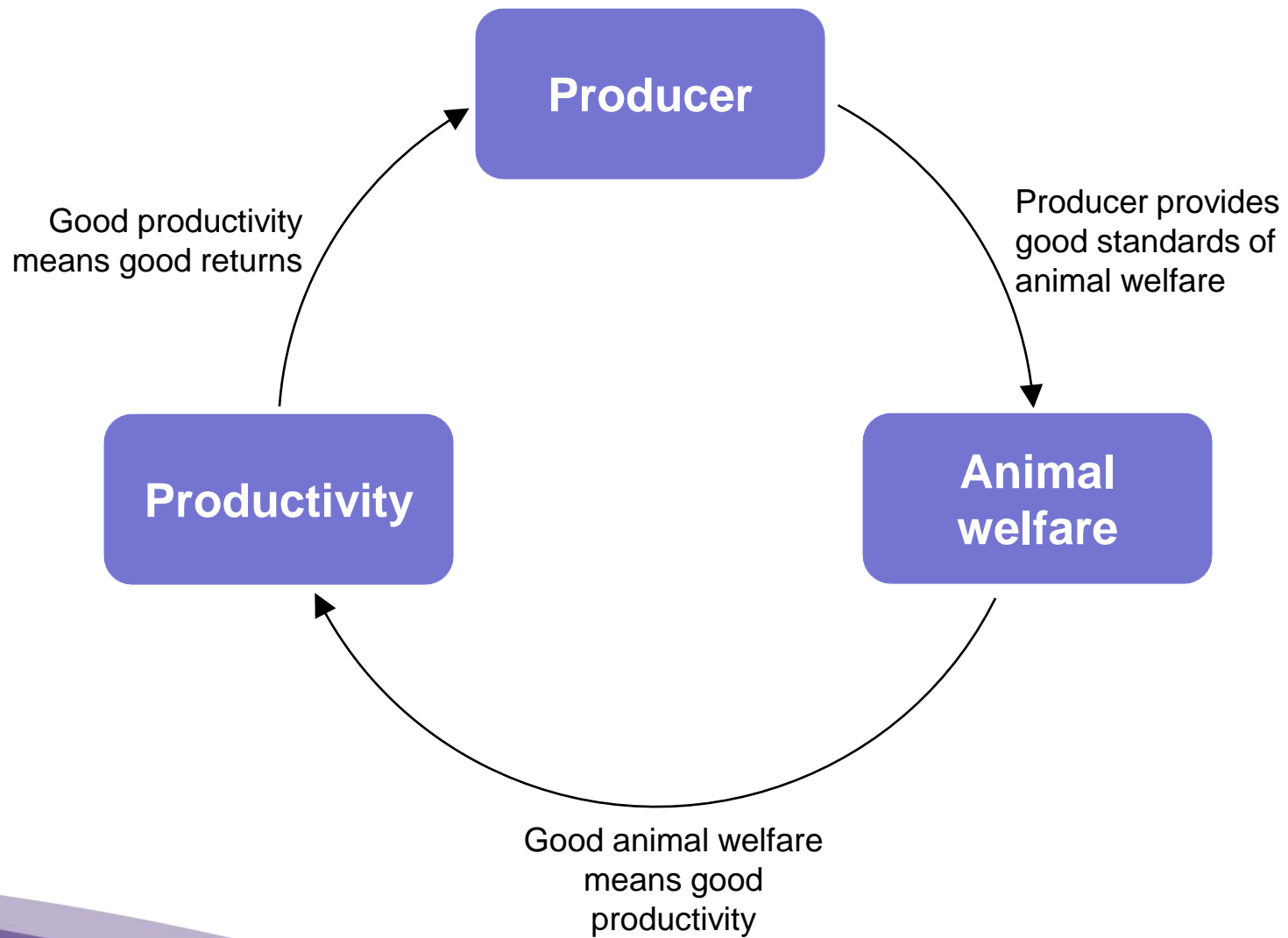
Industry claims

1. Productivity indicates good animal welfare

“My animals are producing therefore they must be happy”

2. Producers have sufficient economic incentives to provide for good standards of animal welfare

“It’s in our commercial interest to look after our animals well”



We are very aware. We love our animals. We depend on them for our livelihood. We are not going to be cruel to them.

- Mr Ivan Venning, *Livestock (Miscellaneous) Amendment Bill*, SA House of Assembly, 29 May 2012, p.1780

I cannot see the logic that is being expressed over and over again that somehow farmers benefit from neglecting their animals or not taking the best possible care of the animals that are there—yes, primarily to make them money—but if those animals are in poor condition and are not being cared for well, the farmer at the end of the day loses out.

- The Hon. Ann Bressington, *Livestock (Miscellaneous) Amendment Bill*, SA Legislative Council, 31 May 2012, p.1388

Although agricultural businesses are necessarily profit making or profit seeking enterprises, I believe that, overwhelmingly, farmers are very conscious of the welfare of their livestock. Obviously, healthy and contented animals are productive animals.

- The Hon. Gail Gago, *Livestock (Miscellaneous) Amendment Bill*, SA Legislative Council, 27 March 2012 p.671

Animals that are mistreated are not as productive as those that are not and they reproduce much less. In simple terms, unhealthy and unhappy animals produce poor-quality meat and dairy products.

- Mr Jai Rowell, *Prevention of Cruelty to Animals Amendment Bill*, NSW Legislative Council, 12 September 2012

Productivity and animal welfare

Measuring an animal's state of welfare requires an assessment of an animal's:

- physical condition;
- physiological functioning;
- brain state;
- behaviour; and
- feelings.

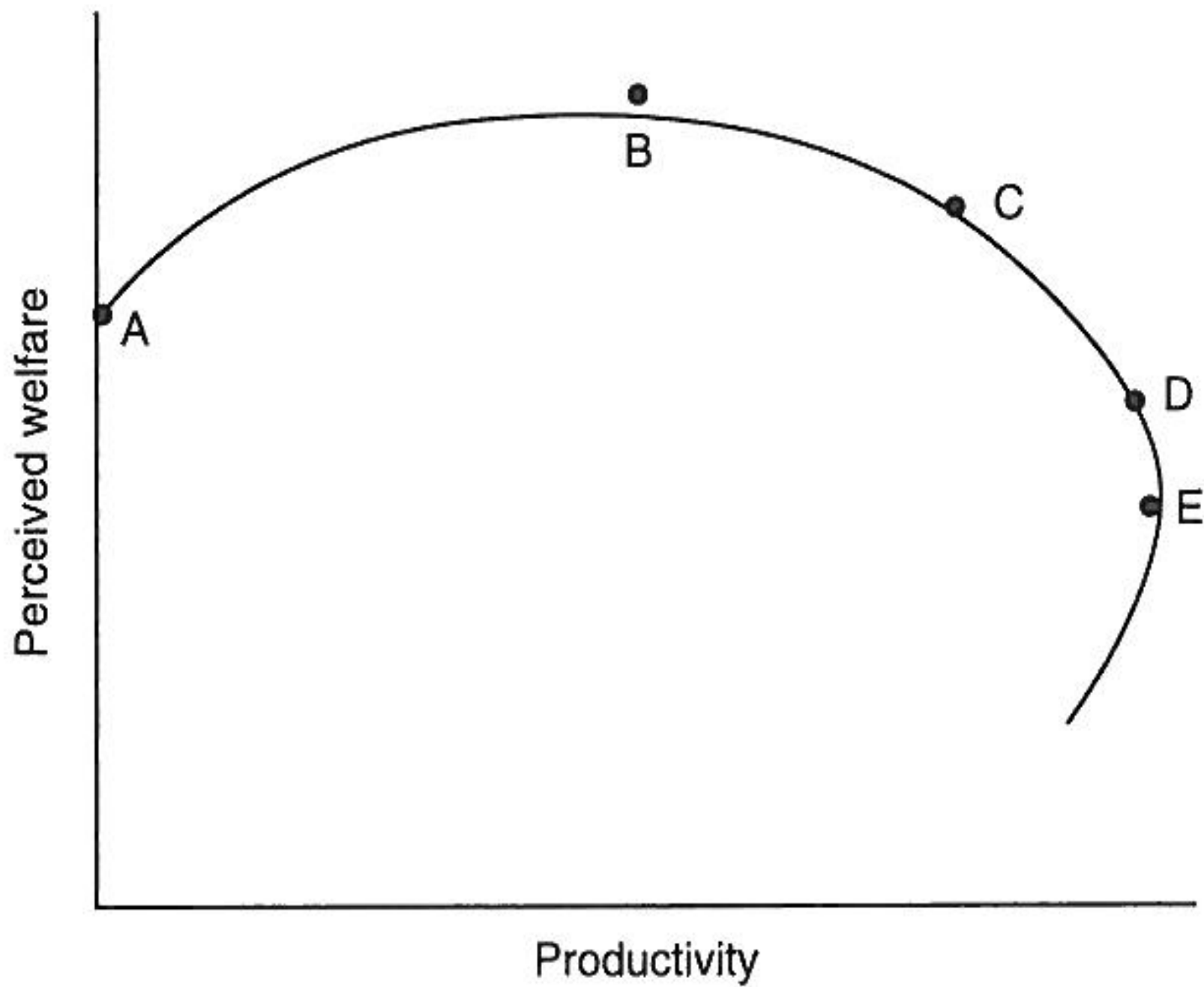
– Broom (2008).

Productivity and animal welfare

Good animal health does not necessarily equate to good animal welfare:

“There are many circumstances where behavioural or physiological coping mechanisms are activated, indicating that welfare is poor, but the animal's health remains good. These include: situations where the coping mechanisms are successful, such as when body temperature is maintained despite extreme ambient temperatures; circumstances where failure to cope has consequences for psychological, but not physical stability, such as in the development of non-injurious pathological behaviours; and where detrimental effects upon physical stability are compensated for by management practices, such as the routine use of antibiotics.”

- Broom (2008)



Productivity and animal welfare

Simple logic of production economics allows one to postulate a generalised relationship between the productivity of livestock and their (perceived) welfare. This suggests there is complementarity at low levels of output, with increases in production from better husbandry (nutrition, housing, disease control, etc) bringing better welfare. However, ultimately and inevitably a point is reached where further productivity increases will come at increasing welfare cost as 'intensity' rises and husbandry techniques seek to exploit further the biological potential of the animal. Animal science and technology makes such developments possible, and commercial pressures cause them to be adopted.

...

Since animal welfare is in the nature of a nonmarket good ('externality') it carries no evident price so farmers inevitably focus on the animals' productivity, which does provide commercial reward. Economic optimising theory demonstrates that market signals will tend to cause welfare standards to fall below the socially desirable norm.

- McInerney (2004)







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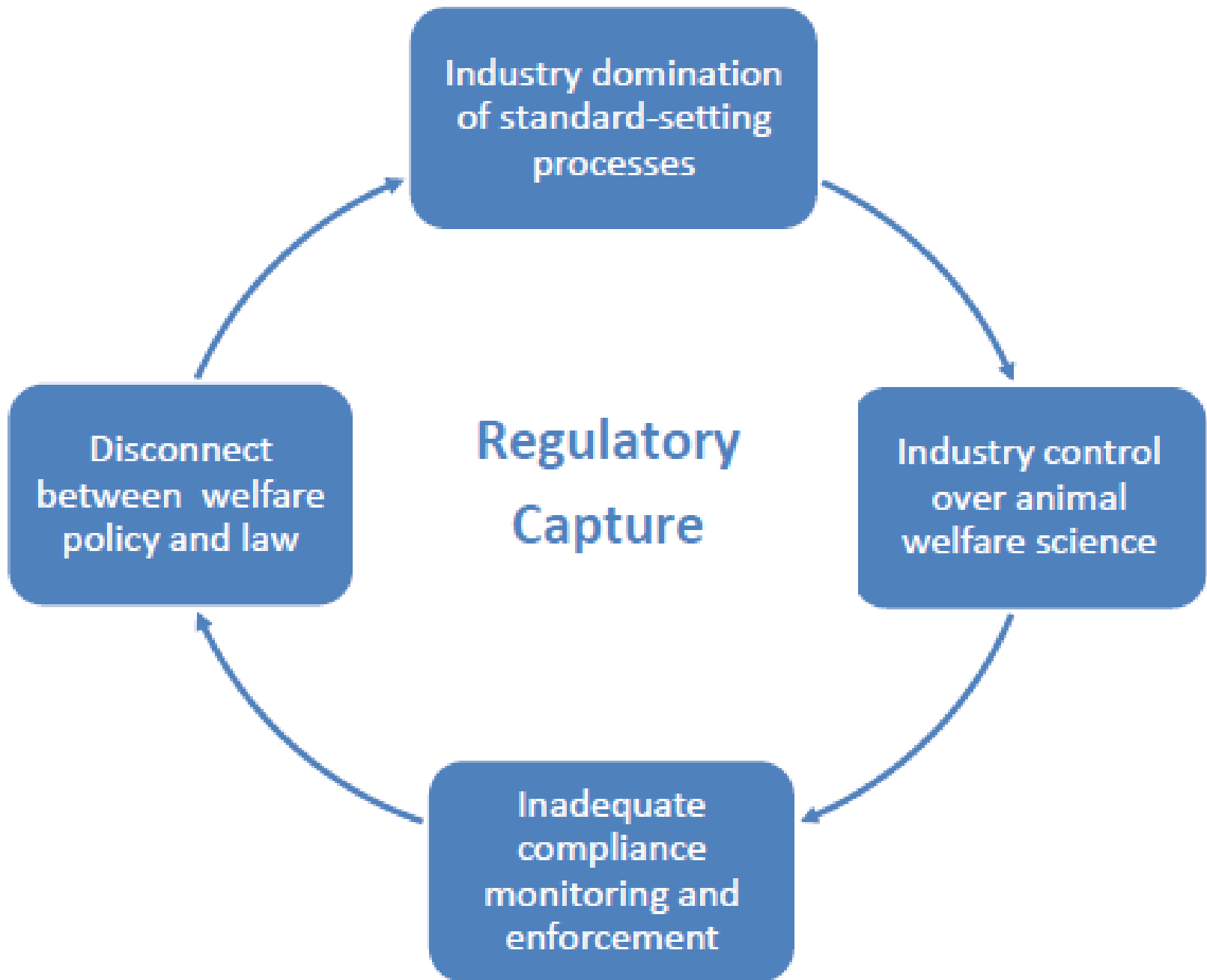
Effects of regulatory design

- Responsible institutions have conflicting responsibilities: promoting productive and profitable primary industries vs promoting and protecting farm animal welfare.
- Heavily instrumental approach to animal welfare
- Public interest in protecting farm animal welfare routinely subordinated to the interests of commercial productivity.

Effects of regulatory design

Agencies will systematically underperform on “secondary goals” that conflict with the achievement of the agency’s primary goals.

- Eric Biber, ‘Too Many Things to Do: How to Deal With the Dysfunctions of Multiple-Goal Agencies’ (2009) *Harvard Environmental Law Review*.



Effects of regulatory capture

- Recognised effects include:
 - Deficiencies in participatory democracy (Baxter, 2012)
 - Disproportionate industry influence in regulatory processes (Baxter, 2012)
 - Distortion of perceptions leading regulator to preclude consideration of other interests (Baxter, 2012)
 - Bias during notice and comment procedures (Kwak, 2012)
 - Favourable discretionary decisions for industry (Adams et al 2007)
 - Failure to adequately enforce regulations (Kwak, 2012)
 - Regulator adopting advocacy role for industry (Adams et al, 2007)
 - Non-compliance with legislative mandates (Kwak, 2012)

Reform options

- Imposing greater oversight by Parliament:
 - More definitive mandates in authorising legislation;
 - Constraining regulatory discretion;
 - Greater use of Parliamentary Committees and ombudsman mechanisms;
 - Increasing transparency through further reporting/disclosure obligations.
- Enhance equity in democratic participation: tripartism (genuine NGO participation in deal-making) (Ayres & Braithwaite, 1991)

Reform options

- Reform options must be considered in light of the capture identified.
- Most effective option is to improve design and structure of FAW framework by separating competing responsibilities (Baxter, 2011).
- Internal restructuring not sufficient.
- Requires establishment of an independent institution:
 - Independent Office of Animal Welfare

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