

Submission

Victorian

Reforming Victoria's animal care and protection laws Submission

October 2022





Animal Justice Party

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The Animal Justice Party 2021

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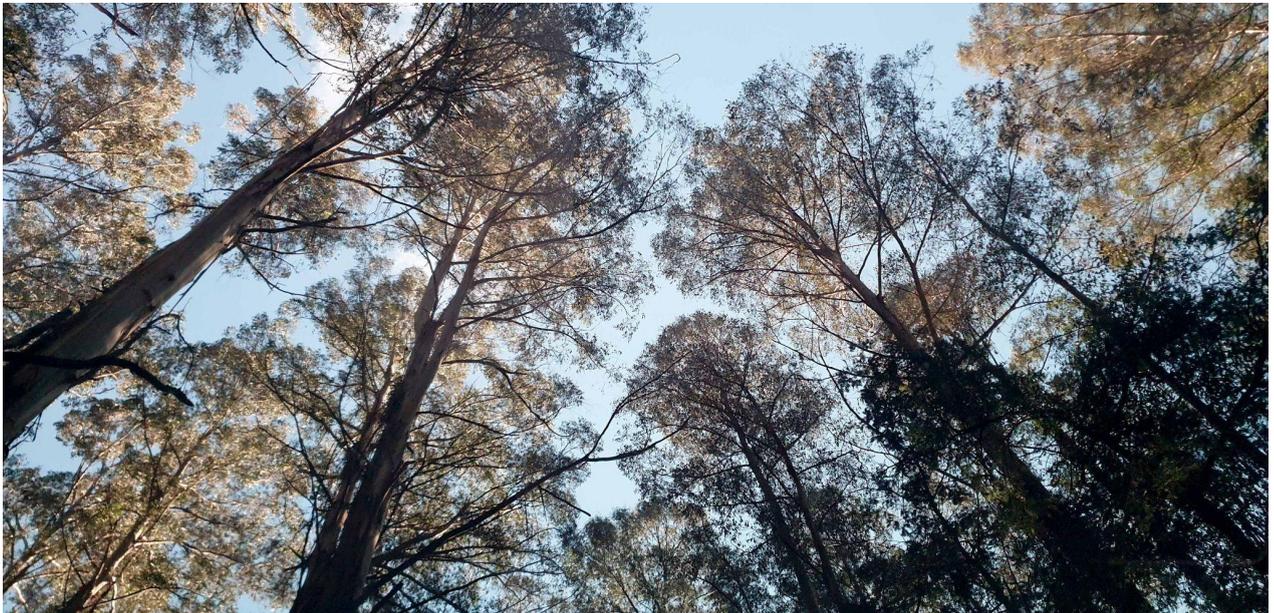
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The Animal Justice Party acknowledges the First Nations peoples as the custodians of the land on which we live and work.



About the Animal Justice Party

The Animal Justice Party (the AJP) is a political party established in 2009 to secure the interests of animals and nature through Australia's democratic institutions of government. Our vision is a planet on which animals and nature have the right to live and thrive free from negative human interference and a human society which functions with kindness and compassion within its ecological limits as a responsible member of the Earth community.

The AJP seeks to foster respect, kindness, and compassion towards all species particularly in the way governments design and deliver initiatives, and the manner in which these initiatives function.

In New South Wales the AJP has two elected representatives in the Legislative Council of NSW, Mark Pearson MLC and Emma Hurst MLC and a councillor in local government, Councillor Matt Stellino. In Victoria, the AJP has an elected representative in the Legislative Council, Andy Meddick MLC, and a councillor in local government, Councillor Julie Sloan.

This submission was prepared by the Victorian Submissions Working Group within the AJP. The working group makes this submission on behalf of the AJP with the approval and the endorsement of the Board of Directors.

Introduction

The *Prevention of Cruelty to Animals Act 1986* (Vic) ('*POCTA*') has been in place since 1986. Despite its name, it has not provided an adequate framework to prevent harm to animals.

Work is currently underway to replace *POCTA* with brand new animal care and protection laws – the proposed *Animal Welfare Act*. The new Act aims to improve existing provisions under *POCTA* to uphold the high standard of animal care expected by Victorians.

According to World Animal Protection's Animal Protection Index, an index that ranks 50 countries around the world according to their animal welfare policy and legislation, Australia scores a "D" for animal welfare.¹ Our laws are speciesist, which means we humans put the interests of all other animal species far beneath our own. Species are then further classified depending on their relationship and interaction with humans. Animals are classified differently and granted different rights, based on how humans use them: for food, clothing, entertainment, companionship or experimentation. Because of this, many animals are still exempt from meaningful legal protection despite improvements in legislative frameworks.

¹ <https://api.worldanimalprotection.org/country/australia>

The new animal care and protection laws have taken some positive steps to redress this imbalance, including recognising animal sentience, creating a framework to establish requirements for those who care for animals, and creating a new cruelty offence with higher penalties. However, the new Act does not go far enough. The new Act has many exemptions that weaken its ability to adequately acknowledge sentience. Non-human animals not only have the ability to experience pain and pleasure, but to plan for the future, remember the past, form strong social bonds, and enact their own moral code. As a matter of justice and fairness, all species deserve equal consideration under law.

This submission is guided by our mission and vision and underpinned by our policies. The AJP has policies on animals, the environment and human issues.² Our policies on Animal Definition,³ 1080,⁴ Animal Law,⁵ Animal Experimentation,⁶ Animals in Entertainment,⁷ Aquaculture,⁸ Brumbies,⁹ Companion Animals,¹⁰ Dingoes,¹¹ Duck Shooting,¹² Farming,¹³ Greyhound Racing,¹⁴ Horse Racing, Jumps and Harness,¹⁵ An Ethical Economy,¹⁶ Education,¹⁷ Introduced Animals,¹⁸ Invertebrates,¹⁹ Kangaroos,²⁰ Live Animal Export,²¹ Mouse Populations,²² Wet Markets,²³ Wildlife Protection,²⁴ Rodeos,²⁵ Puppy and Kitten Farms,²⁶ and Zoos,²⁷ are particularly relevant to this consultation.

The plan for Victoria's new animal care and protection laws has 16 policy positions and seeks feedback from 4 angles:

- Priorities and concerns
- Impacts
- Unintended consequences
- Gaps

² Animal Justice Party *Policies* <https://animaljusticeparty.org/policies/>

³ <https://assets.nationbuilder.com/ajp/pages/837/attachments/original/1646533246/animal-definition-april2021.pdf?1646533246>

⁴ <https://assets.nationbuilder.com/ajp/pages/782/attachments/original/1646621376/1080.pdf?1646621376>

⁵ https://assets.nationbuilder.com/ajp/pages/830/attachments/original/1646621753/Animal_Law.pdf?1646621753

⁶ https://www.animaljusticeparty.org/animal_experimentation

⁷ https://www.animaljusticeparty.org/animals_in_entertainment

⁸ <https://assets.nationbuilder.com/ajp/pages/788/attachments/original/1646621978/AQUACULTURE.pdf?1646621978>

⁹ <https://www.animaljusticeparty.org/brumbies>

¹⁰ https://www.animaljusticeparty.org/companion_animals

¹¹ <https://www.animaljusticeparty.org/dingoes>

¹² https://assets.nationbuilder.com/ajp/pages/765/attachments/original/1646622683/duck_shooting_SA.pdf?1646622683

¹³ <https://assets.nationbuilder.com/ajp/pages/786/attachments/original/1664102567/farmingsep22-2.pdf?1664102567>

¹⁴ <https://assets.nationbuilder.com/ajp/pages/751/attachments/original/1646623121/Greyhounds.pdf?1646623121>

¹⁵ <https://assets.nationbuilder.com/ajp/pages/749/attachments/original/1646623408/horse-racing.pdf?1646623408>

¹⁶ <https://www.animaljusticeparty.org/economy>

¹⁷ <https://www.animaljusticeparty.org/education>

¹⁸ https://www.animaljusticeparty.org/introduced_animals

¹⁹ <https://www.animaljusticeparty.org/invertebrates>

²⁰ <https://www.animaljusticeparty.org/kangaroos>

²¹ <https://assets.nationbuilder.com/ajp/pages/747/attachments/original/1646625767/live-animal-exports.pdf?1646625767>

²² https://www.animaljusticeparty.org/mouse_populations

²³ https://assets.nationbuilder.com/ajp/pages/769/attachments/original/1646619965/Wet_Markets.pdf?1646619965

²⁴ <https://assets.nationbuilder.com/ajp/pages/761/attachments/original/1646621192/Wildlife-Protection.pdf?1646621192>

²⁵ <https://assets.nationbuilder.com/ajp/pages/754/attachments/original/1646626283/RODEOS.pdf?1646626283>

²⁶ https://assets.nationbuilder.com/ajp/pages/833/attachments/original/1646626138/PUPPY_FARMS.pdf?1646626138

²⁷ <https://www.animaljusticeparty.org/zoos>

Our submission tackles this critical reform by discussing expectations for what the Act should achieve and how well the policy positions are meeting these outcomes. The focus will be on which measures we support, and where there are still gaps and loopholes that allow for further exploitation by individuals and industry. Our submission is structured following the 16 policy positions proposed by the government; recommendations are provided throughout our submission.

Thank you for the opportunity to contribute to this consultation.

1. Recognising sentience

'The Purposes of the new laws would recognise that animals have the capacity to feel, perceive their environment, and to have positive and negative experiences like pleasure and pain – that is, that animals are sentient.

The Purposes would also recognise that animals in Victoria can be owned and used for lawful purposes. This includes for activities such as farming, recreational activities and hunting.²⁸

Priorities and Concerns

These 2 statements are entirely contradictory, yet they form the basis of the first policy position in the plan for Victoria's new animal care and protection laws.

The recognition of animal sentience is an important step forward in creating legislation to protect animals. The new Act recognises that animals have the ability to experience positive and negative emotions. We need to go further. Non-human animals also have the ability to plan for the future, remember the past, form strong social bonds and enact their own moral code. Like us, each species is different and each individual within each species is completely unique. All animals play, procreate, sleep, rest, nest, contemplate, suffer, and experience a wide range of feelings and emotions.

This Act presents an opportunity to create meaningful change for animals, starting with the premise of recognising animal sentience, yet sadly it falls short. After starting with a promising first sentence, it then sets the tone for the remainder of the Act, by detailing a plethora of exemptions and exceptions that all result in circumventing the protection of animals, when it benefits humans to use them. The animal care and protection laws include exemptions that allow animals to be used for entertainment in rodeos and racing, it lists exemptions that allow animals to be killed for recreation and convenience, and it lists exemptions where actions

²⁸ <https://engage.vic.gov.au/download/document/28580>

towards animals that would be considered cruel under 'normal' circumstances become justified to make farming practices more profitable. These will be discussed further under their individual headings, however many of the issues identified throughout this submission stem from the dichotomy of the Plan recognising animal sentience, then ignoring it.

Gaps

The definition of sentience in the Act is inadequate. Studies in animal behaviour not only show that animals have positive and negative experiences, but that their lives are important to them and that they will take whatever action is necessary to try to preserve their life. This is not to anthropomorphise animals; we acknowledge they think, feel, love, play, work, sleep and do all other activities on their own terms, in their own ways, which cannot be ranked, compared or contrasted with the human experience. Non-human animals have the anatomy and physiology to feel and experience life in a very similar way to humans. However, their cognitive abilities are not as sophisticated. This does not mean that their sentience is less, or of lesser significance, than that of humans.

Table 1 shows examples of where sentience has been defined and used in case law in other jurisdictions, yet even in some of these, the definition and implications are not clearly enough defined in law. However it does set a precedent for using sentience in legal decision-making. The development of the new Act presents an opportunity for Victoria to learn from other jurisdictions to build a better version, with a clear, unambiguous definition and explanation of the application and implications of recognising animal sentience, creating world class, gold standard legislation to protect animals.

Table 1. Case Law recognising and interpreting animal sentience. *Source:* Kotzmann, J., 'Recognising the Sentience of Animals in Law: A Justification and Framework for Australian States and Territories' *Sydney Law Review* (2020).

Case law recognising and interpreting animal sentience

In her analysis of jurisdictions that recognise animal sentience (including the Australian Capital Territory (ACT), New Zealand (NZ) and Quebec), international law lecturer, Jane Kotzmann, argues that while recognising sentience is a welcome development, further changes to increase the protection of animals is required. She goes on to explore how NZ courts have interpreted animal sentience in sentencing, and points out that, while many NZ cases have expressly referenced sentience in the interpretation of cruelty legislation they largely fail to explain *how* the legal recognition of animal sentience tangibly influences the gravity or seriousness of a cruelty offence.

The Court of Appeal in Erickson v Ministry for Primary Industries considered the gravity of offending by a slaughter-house employee who pleaded guilty to recklessly ill-treating bobby calves.²⁹ Kotzmann argues that, while the Court of Appeal stated that animal sentience is a primary factor in sentencing, it did not explain how sentience should be applied to the particular facts of the case.

Furthermore, Kotzmann contends that NZ courts in *Police v Witehira* (concerning a man who beat his son's dog to death)³⁰ and *McCartney v Canterbury Society* (involving a cat owner who failed to provide adequate medical treatment)³¹ similarly failed to explain how sentience manifested in determining the gravity of animal cruelty offences.

²⁹ [2017] NZCA 271.

³⁰ [2018] DCR 638.

³¹ [2018] NZHC 2624.

On the other hand, Kotzmann acknowledges that the High Court in *Wallace v Royal Society for Prevention of Cruelty to Animals Auckland (SPCA Auckland)* did offer some judicial guidance on the application of sentience to animal cruelty proceedings.³² In that case, the SPCA applied for disposal orders to ‘sell, rehome or, as a last resort, euthanise the dogs’ the subject of the alleged offending. The High Court expressly determined that the purpose of disposal orders was to prevent negative impacts to animals which was consistent with the recognition that animals are able to perceive and feel.

Several cases in Quebec also refer to animal sentience and offer some guidance on the interpretation of sentience in animal welfare laws: *Trahan v Ville de Montréal*,³³ and *Road to Home Rescue Support v Ville de Montréal*.³⁴ Nonetheless, Kotzmann’s analysis shows that “[w]hile acknowledging animal sentience is commendable, it nevertheless fails to address the significant ways in which the law renders animals vulnerable to human cruelty.”³⁵

Impacts

Recognising sentience has the potential to change the lives of billions of animals across Victoria. However, as the existing case law in other jurisdictions shows, the effectiveness of the legal recognition of animal sentience is limited in its practical application in sentencing. As such, it must be accompanied by other legislative amendments.

Unintended Consequence

Disregarding animal sentience in the same Act that acknowledges it, through a lengthy series of exemptions and exceptions, weakens the Act’s ability to protect animals from harm at the hands of humans.

³² [2019] NZAR 1393.

³³ [2019] QCCS 4607 (Quebec Superior Court, Bachand, JCS, 1 November 2019).

³⁴ [2019] QCCA 2187 (Quebec Court of Criminal Appeal, Bich JCA, Savard JCA and Rancourt JCA, 20 December 2019).

³⁵ Kotzmann, J., ‘Recognising the Sentience of Animals in Law: A Justification and Framework for Australian States and Territories’ Sydney Law Review (2020).

Recommendations:

1. Remove exemptions and exceptions that allow for acknowledgement of sentience to be dismissed.
 2. Remove exemptions and exceptions that allow sentient beings to be used or treated in ways which can cause them to feel pain, fear, discomfort, or other negative emotions.
 3. Ensure decision-making guidance does not prioritise the use of animals for the entertainment or benefit of humans over the welfare of the animals. This unequal recognition of sentience is not justifiable.
 4. Define what is a 'legitimate' interaction with animals in view of their recognised sentience.
 5. Guide decision-making by recognising that anything being done to an animal which is not in their best interests should not be permitted.
 6. Grant non-human animals legal rights. Non-human animals should have rights that maximise the potential for them to live according to their capacities and exercise natural behaviours.
 7. Expand the definition of sentience to recognise that animals' lives have intrinsic worth and their lives matter to them. Include this in decision-making frameworks.
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2. Animals covered by the new law

Priorities and Concerns

Expanding the previously narrow definition of animals used by *POCTA* to include fish, amphibians, reptiles, birds, mammals, crustaceans (*e.g.*, lobster, crab or crayfish) and cephalopods (*e.g.*, octopus, squid, cuttlefish or nautilus) is a positive step in recognising sentience. For example, an octopus has the same ability to feel pain as the family dog.

However, the definition of animals is incomplete. Studies show that insects such as fruit flies can feel chronic pain post injury,³⁶ and spiders have cognitive abilities and plan ahead.³⁷ Ignoring these animals in the Act supports the negative concept of speciesism and helps to maintain the current principles that some animals matter more than others.

In many instances these animals' senses are superior to humans and therefore their ability to suffer may be enhanced.

³⁶ <https://www.smithsonianmag.com/smart-news/insects-can-experience-chronic-pain-study-finds-180972656/>

³⁷ <https://www.newscientist.com/article/mg24532680-900-spiders-think-with-their-webs-challenging-our-ideas-of-intelligence/>

Gaps

The definition of 'animal' should include all animals that have the ability to have positive and negative experiences.

Impacts

Many exemptions still exist that allow certain industries to exercise cruelty without scrutiny. For example, most dogs are companion animals and considered by many to be family members, covered by the *Domestic Animals Act 1994* (Vic) and the current *POCTA*. Those who are used for entertainment (*e.g.*, greyhounds) or farm work (*e.g.*, herding dogs) are considered agriculture animals and exempted from the prevention of cruelty.

Because some animals are covered by multiple Acts, there are different thresholds for what is construed as cruelty, depending on how the animal is being used. For example, cruelty towards an octopus kept in an aquarium is now an offence under the new Act, yet the inherent cruelty in removing an octopus from its habitat and killing it (fishing) is still acceptable.

Unintended Consequence

The Act states that the definition of animals may be reviewed and expanded with 'scientific agreement'. The process of determining this will involve a cost analysis. Using cost as part of the decision-making framework for scientific determination undermines the very concept of scientific evidence and ethical decision-making, and makes a mockery of the principles of the Act.

Inconsistencies in how animals are allowed to be treated under different legislation undermines the principles of preventing cruelty.

Recommendations:

8. Reclassify animals such as greyhounds and racehorses and include them under the new animal care and protection laws.
 9. Ensure consistency across all Acts in describing acceptable ways for humans to interact with and treat animals.
 10. Create a hierarchy of legislation with the new *Animal Welfare Act* at the top. Therefore, where an activity is regulated by another act (such as the *Wildlife Act 1975* (Vic)) the requirements of the new Act must be met first, before other laws can be considered.
 11. Broaden the definition of 'animal' in the Act to include insects and spiders.
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3. Legislative Framework

“In general, relevant elements of the existing POCTA codes of practice (things people must do) are going to be replaced in the new regulations, making them enforceable. Other elements (things people ‘should’ do) would be in good practice guidance.”³⁸

Priorities and Concerns

The proposed legislative framework has tremendous potential to create meaningful change for animals by incorporating current, non-enforceable Codes of Practice into the new and enforceable *Animal Welfare Regulations*, which will flow on after the Act has been finalised.

However, the Act describes that these Codes of Practice will be divided between the enforceable regulations and non-enforceable guidelines, which poses the question of how effective this framework change will actually be, until there is consultation and finalisation of the regulations in 2 years time.

Gaps

The Act and the regulations are enforceable; guidelines are not. Therefore, depending on how ambiguous the Act and the regulations are, this may provide further loopholes that will still allow legal animal cruelty. There is also no penalty for not complying with newly established minimum standards which fall under regulations. Minimum standards of care must therefore be mandatory for them to be effective in reducing animal harm and cruelty.

Impacts

The animal care and protection laws state that where animals are also covered by other Acts, this new Act will not contradict those. Therefore, many acts towards animals that fit the definition of cruelty towards animals remain legal, as these other statutes run ‘side by side’ with the *Animal Welfare Act*, which specifically details exemptions to allow these acts of cruelty. Examples of these existing Acts that can't be contradicted are the *Domestic Animals Act 1994*, the *Livestock Management Act 2010* (Vic) and the *Fisheries Act 1995* (Vic).

Since these Acts detail particular activities involving animals rather than overarching principles, there should be a hierarchy of legislation recognised to ensure that the principles of the *Animal Welfare Act* are complied with, before any other legislation can take effect. Otherwise, the principles of the animal care and protection laws are compromised by other, outdated legislation, which does not recognise sentience.

³⁸ <https://engage.vic.gov.au/download/document/28580>

Unintended Consequence

The language of the principles is incompatible with the recognition of sentience. 'Slaughter', 'production animal' and 'pest' are incongruent with the principles of the Act and strengthen speciesism rather than creating consistent legislation.

Recommendations:

12. Create mandatory minimum standards of care within the *Animal Welfare Act*.
 13. Create mandatory regulations without exemption in the *Animal Welfare Act*.
 14. Create a hierarchy of legislation where the new *Animal Welfare Act* is the overarching legislation. Only when its principles have been met **without** exceptions or exemptions, can other legislation come into force. They must therefore comply with the animal care and protection laws first.
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4. Decision making principles

Priorities and Concerns

The creation of a set of principles to guide decision-makers when discussing and acting on activities involving humans interacting with animals is positive. Hopefully, these guiding principles will lead to a more consistent approach to how we allow humans to treat other animals.

However, the principles themselves that are listed in the Act are so vague and contradictory to the purpose of protecting animals, that they are essentially useless in their current state. No amount of pain or suffering is justifiable to inflict upon another sentient being.

Gaps

"The decision-making principles would be:

- *Care requirements should be met for animals in the care or control of people*
- *Unreasonable harm, pain or distress for animals should be avoided*
- *Where harm, pain or distress cannot be avoided it should be minimised*
- *Alternatives that reduce harm, pain or distress should be considered."*³⁹

³⁹ <https://engage.vic.gov.au/download/document/28580>

The definition of 'care' is ambiguous. Whilst it may be assumed that it refers to the care requirements policy position detailed in this Act, 'care' can also refer to taking 'due care' or 'being careful' in how humans interact with animals. In the case of the latter definitions, the decision-making principle should apply to all animals, not just those in the care and control of people. If this definition is not broadened, then it will leave many animals such as wildlife without the same level of protection expected to be applied to domestic animals.

'Unreasonable harm' is an oxymoron; no level of harm is reasonable, especially when the harm is being inflicted for reasons such as human entertainment.

'Where harm, pain or distress cannot be avoided it should be minimised'. A reasonable person would say that since no amount of pain is reasonable, there is no need to minimise it, since it can be avoided. There is no need to shoot ducks for fun, hurt animals in rodeos, or cause pigs to suffer in sow stalls. These activities are conducted by choice and can be easily avoided, therefore the harm, pain and distress they cause to animals can also be avoided.

This is where the 'application of the new laws' becomes relevant. For example, if the new Act is allowed to sit side by side with existing legislation such as the *Wildlife Act 1975* (Vic), which permits recreational shooting of animals, then it is clear that the intention of each Act completely negates the other. It is little more than a way of legalising cruelty and justifying the action by including a goal of minimising suffering. This is not in line with community feeling or expectations for legislation designed to 'care for' and 'protect' wildlife. For this reason, there must be a hierarchy of legislation, where the principles of the new *Animal Welfare Act* must be met FIRST, before other legislation can be applied. This will prevent loopholes where older legislation, written without the recognition of sentience, works to undermine the protections of the new Act.

"Alternatives that reduce harm, pain or distress should be considered." This statement is too open. Finding alternatives that don't cause harm to animals should not be a consideration, that allows decision-makers to decide how vigorously they will apply the principle; it should be a clearly written statement that alternatives must be sought. Anything milder allows the loophole of justifying harm to animals, because a harmful option may be easier, cheaper, or already being used. This statement in its current format contravenes the entire purpose of the revision of this Act, which seeks to create clearer, more applicable laws in line with community expectations for how humans treat animals.

When applying these principles, decision makers may include Ministers, department heads and other staff involved in making decisions such as granting licences or developing regulations. Currently, this principle has no requirement for people in those positions to not have a conflict of interest on activities they are making decisions about. This requirement should be included to create a just and fair framework for decision-making. Additionally, the new Act states that these

principles must be followed where relevant. There are no situations where the care and protection of animals is not relevant. The principles (once rewritten) should be mandatory to follow at all times.

It is also stated that the Minister for Agriculture may request information on the decision-making process and publish it if they wish. This should be a requirement, not an option, to make the decision genuinely transparent. It should also be available for the general public to easily access, so they can see how the decision-making principles were upheld.

Impacts

The decision-making principles in their recurrent format and wording are only a means of justifying decisions that allow cruelty to animals, under the guise of improving protections.

Unintended Consequence

The new Act also states that decisions will require analysis of costs and benefits. This is entirely contradictory to the concept of creating guiding principles which protect animals. Many practices such as factory farming exist and thrive on the underlying premise of cruelty. Cruelty may mean saving space, which allows for a higher density of animals and therefore greater profit. An often used argument against reforms such as “no more caged eggs” and “an end to sow stalls” by primary producers, is cost, as reforms that lessen harm can make their current business model unviable. Including cost analysis as part of the decision making process negates any positives achieved by the inclusion of this principle.⁴⁰

Recommendations:

15. Remove exemptions and exceptions which legally allow animals to be used, abused, harmed, hurt, distressed, caused to feel pain or fear, or subjected to any other negative experience by humans (regardless of whether this is currently permitted under any other legislation).
16. Develop an Independent Office of Animal Protection.
17. Create an Animal Protection Ministry.
18. Develop an Animal Crime Division of law enforcement.
19. Add a provision that excludes decision-makers from involvement in decisions where they have a conflict of interest.
20. Exclude cost analysis from the decision-making process. Decisions must be made using principles of animal protection, not human financial gain.

⁴⁰ <https://www.pc.gov.au/inquiries/completed/act-eggs/report/batthen.pdf>

5. Application of the new laws

Priorities and Concerns

This section deals with circumstances where 'legitimate' and 'necessary' activities that involve animals under different legislation conflict with care and cruelty offences under the new law. The new Act states that *"Providing clarity in the way the legislation is applied will ensure that legal and legitimate activities involving animals can continue"*.⁴¹ This raises a number of questions: who determines what these two words mean? As discussed earlier, it is quite a stretch to refer to activities such as rodeos and the recreational slaughter of wildlife as 'necessary', and under what definition are they 'legitimate'? The only argument that supports their so-called claim of legitimacy is that there is existing legislation which permits it; existing legislation which was written many years ago (for example, *The Wildlife Act 1975*) and which was written at a time when animal sentience was not recognised by law. Therefore, there is no legitimate justification for seeking to create a policy position that supports the continuation of these activities. Considering the types of activities under discussion, e.g., animal production ("farming"), there is a possible incentive to put profit and convenience ahead of animal welfare.

For the new animal care and protection laws to truly work towards protecting animals, the new Act must be recognised as the Primary Act, and all other legislation comes into effect secondary to the principles and requirements of this Act being met. This can be achieved in one of two ways. The Primary Act can :

- (1) Repeal or amend provisions in other Acts /legislation (e.g., Regulations) that are inconsistent with new Act; and/or
- (2) Include provisions along the lines of *"Wheresoever any provisions of this Act are inconsistent with the provisions of another Act or related legislation, the provisions of this Act shall at all times prevail to the extent of the inconsistency"*.

Gaps

*"People could not be prosecuted for a care or cruelty offence under the new laws when undertaking: ... Veterinary treatment by a registered veterinary practitioner."*⁴²

This exception creates a potential gap in the new laws because under the Guidelines of the Veterinary Practitioners Registration Board of Victoria, there is already a requirement for veterinarians to avoid cruelty:

"Guideline 2 - Animal Wellbeing

The wellbeing of an animal is central in a veterinary practitioner's decision making in the provision of veterinary services.

2.2 A veterinary practitioner (VP) takes appropriate and timely steps to reduce or eliminate an animal's unreasonable or unnecessary pain or distress

⁴¹ <https://engage.vic.gov.au/download/document/28580>

⁴² <https://engage.vic.gov.au/download/document/28580>

2.3 A veterinary practitioner who performs a procedure on an animal ensures that the animal undergoing the procedure is provided with effective pain relief to alleviate, prevent or reduce unreasonable or unnecessary pain or distress during and for an appropriate amount of time following the procedure.”⁴³

So veterinarians are required to provide effective pain relief to animals under their care, yet under *POCTA* individual guidelines, painful surgical procedures can be conducted by non-vets or vets without pain relief. Excepting vets from complying with the new animal welfare laws continues this legislative inconsistency that allows cruel practices to continue.

Additionally, another part of section 2 of the Vet board guidelines states that:

“A veterinary practitioner should take all reasonable steps to safeguard the wellbeing of animals in line with contemporary animal welfare standards. A veterinary practitioner should consider the animal species, their physical environment and their particular circumstances when making decisions relating to the physical health, behavioural and mental health requirements of an animal. The same approach to animal well-being does not necessarily apply to all species in all circumstances.

Optimising the well-being of the animal receiving veterinary services guides a veterinary practitioner in making their professional judgements. A veterinary practitioner should consider what is in the best interest of the animal’s well-being when advising the animal’s owner on its care, treatment, prognosis and management.”⁴⁴

This contradiction suggests that the same approach to wellbeing and preventing harm to animals does not exist across all species of animals, yet if the *Animal Welfare Act* was recognised as the Primary Act, or overarching legislation, and if the exceptions were removed, then these inconsistencies would cease to be applicable.

“Other purposes such as scientific procedures are considered necessary in some circumstances but require controls such as licences to minimise the impacts on animals.”⁴⁵ A licence is not sufficient motivation to not harm animals, although it may potentially allow us to monitor the number of people legally harming animals for scientific purposes. If the new animal care and protection laws were overarching, then recognising sentience would, and should, make these methods of experimentation illegal. This would force other avenues to be explored. Currently, this exception just allows cruel behaviours to continue legally and unchecked.

⁴³ https://www.vetboard.vic.gov.au/VPRBV/VPRBV_Guidelines/Guidelines_TOC.aspx

⁴⁴ https://www.vetboard.vic.gov.au/VPRBV/VPRBV_Guidelines/Guidelines_TOC.aspx

⁴⁵ <https://engage.vic.gov.au/download/document/28580>

“No exception would apply to the rehabilitation of injured wildlife or the keeping of wildlife under a permit under the Wildlife Act”⁴⁶ This potentially creates a ridiculous situation whereby wildlife rescuers can be prosecuted for a cruelty offence, for example, in situations where an animal is in pain during their transport to a veterinarian to receive medical care, yet a shooter who harmed the animal deliberately in the pursuit of ‘fun’ cannot be charged with a cruelty offence, as the laws provides them with an exemption from the requirement to not be cruel to animals. This situation is unacceptable and untenable. Wildlife rescuers must be protected from any potential harm inadvertently occurring during their overall goal of doing ‘good’. Similar to the ‘*Good Samaritan Act*’ they, and the animals being given a second chance at life, deserve better protections.

Impacts

This policy position legalises cruelty and undermines the purpose of this new Act. The Act recognises that some activities have a high risk of causing harm to animals, for example shooting them, yet exempts people from following the fundamental principles of the new *Animal Welfare Act* by allowing other contradictory legislation to justify and allow their actions. This means a person could not be prosecuted for a care or cruelty offence under the new laws when undertaking recreational duck shooting, killing wildlife via an Authority to Control Wildlife (ATCW) permit, or using pesticides to kill native dingoes, when they are erroneously perceived to be putting farmed animals at risk, despite the law recognising that these activities would legally be considered harmful to animals, and therefore cruel under different circumstances.

Unintended Consequence

“This is a very exciting project where hunters will train the youth of the Gunditjmarra people to get them back into country.”⁴⁷

Activities conducted under the *Traditional Owner Settlement Act 2010* are excepted from complying with the new laws. This exception could potentially lead to a situation where this is exploited, not by Traditional Owners, but by non-Indigenous Australians. An example is the 2020 ‘initiative’ by hunting lobby group Field & Game Australia, in collaboration with gun manufacturer Beretta, to train young Indigenous people in using guns to hunt. This appears to contradict the purpose of the *Traditional Owner Settlement Act 2010* which is to respect and preserve cultural heritage. Traditional hunting methods did not involve guns, which were introduced as part of European colonisation of Australia.

This exception allows non-Indigenous shooters to enjoy hunting in areas not usually open to them and potentially creates new avenues of hunting when recreational duck shooting is finally banned in Victoria - but all conducted under the guise of culturally sensitive PR activities. The

⁴⁶ <https://engage.vic.gov.au/download/document/28580>

⁴⁷ <https://www.pressreader.com/australia/field-and-game/20200301/281543702963628>

shooting fraternity are attempting to inveigle themselves into the good will afforded to Traditional Owner groups, conflating modern cruelty with Indigenous hunting practices.

Note that modern shotguns fire a ‘scattergun’ spray of steel pellets into the air and as they fan out, the pellets can strike waterbirds on wings, legs, in eyes, neck, bill and/or internal organs. The wounding rate is high; some ducks survive while impaired by shrapnel, and others die slowly from their wounds or from infection or starvation because they are no longer able to feed.

*“The exceptions aim to reduce and manage any risks associated with these activities by being transparent about how the new laws apply”*⁴⁸ In fact the exceptions detail all the ways in which the new laws won’t apply.

“At present, some activities conducted in accordance with the requirements of other Victorian legislation (such as the Meat Industry Act 1993, the Catchment and Land Protection Act 1994, and the Fisheries Act 1995) are provided an exemption (as opposed to an exception) to the POCTA Act.

*These exemptions allow for the possibility that the POCTA Act does not apply, even where cruelty has clearly occurred.”*⁴⁹

These exemptions create the incorrect perception that animal welfare laws are not relevant for activities such as farming, fishing, hunting and ‘pest’ control, and that somehow, animals harmed under these exemptions are of lesser importance than, for example, a family dog. Recognition of sentience and a life free of human harm should apply to all animals and all species of animals equally.

This inconsistency exists between species, and also to the same species under different sections of the laws. For example, cruelty towards an octopus kept in an aquarium will be an offence under the new Act, yet the inherent cruelty in removing an octopus from its habitat and killing it (fishing) is acceptable, since it’s permitted under the *Fisheries Act 1995*.

*“The control of pest animals using a method authorised by regulations made under the Catchment and Land Protection Act 1994”*⁵⁰ This Act allows 1080 (and other poisons) to be used as a pesticide to kill animals in an extremely inhumane manner. The justification for causing sentient animals to be killed in this painful and horrific manner is the existence of the outdated *Catchment and Land Protection Act 1994* (Vic),⁵¹ which doesn’t recognise sentience, yet which cannot be contradicted by this new *Animal Welfare Act*, which does. Despite the recognition of

⁴⁸ <https://engage.vic.gov.au/download/document/28580>

⁴⁹ <https://engage.vic.gov.au/download/document/28580>

⁵⁰ <https://engage.vic.gov.au/download/document/28580>

⁵¹ https://agriculture.vic.gov.au/__data/assets/pdf_file/0007/537109/1080-Victorian-Code-of-Practice-July-22.pdf

sentience, and the recognition of a high risk of harm to animals, the new Act still justifies including an exception in the new Act to continue to allow the use of 1080. Contrary to the rhetoric on some government sites, this toxic metabolic poison is non-selective, slow-acting and there is no antidote. It is a synthetic poison which is not naturally occurring, as is constantly and erroneously stated in the literature. One teaspoonful is enough to kill 100 adult humans, leading to it being categorised as a chemical of security concern for Australia. Animals die a prolonged, agonising death consisting of vomiting and defecating in an effort to remove the poison from their body. Symptoms include frenzied behaviour, vocalisations similar to screaming, convulsions, respiratory depression, arrhythmias, and eventual death due to respiratory and cardiac failure. Large animals such as herbivores can take days to die. Thousands of non-target animals are the victims of both primary and secondary poisoning.

Not only does this undermine the very principles of caring for and protecting animals, but it also contradicts the 'decision making principles' in this new Act which state that 'alternatives that reduce harm, pain or distress should be considered'. There is a vested interest on behalf of the 'pest' control industry to continue using 1080 and other poisons despite the fact that it could currently be regarded as a form of ecocide. There are numerous alternatives such as fertility control, guard animals such as donkeys, fox lights, fencing, and improved husbandry such as keeping newly born animals in a protected environment.

*"This recognises responsibilities for different portfolios across government, supporting the authority of the relevant Minister and department to continue to be the primary decision-maker."*⁵² The purpose of these new laws are stated to be to improve clarity and consistency in how humans interact with animals across a range of activities, and the decision-making and legislative frameworks have been created to try to support this. Whilst there are many areas that require improvement, allowing decision-makers to exercise judgement rather than following this framework, undermines the intended consistency of the Act and creates the potential for bias and conflicts of interest to continue to influence decisions, in the same way that they currently do.

Recommendations:

21. Designate the Animal Welfare Act as the Primary Act, with other Acts and laws that currently refer to activities involving human-animal interactions only coming into effect once the provisions and requirements of the Primary Act have been met.
22. Remove care exemptions for hunting and species management.
23. Disallow exemptions and exceptions to the new laws, that are included on the basis that certain actions are allowed under other pre-existing laws.

⁵² <https://engage.vic.gov.au/download/document/28580>

24. Add the following *“This exception recognises that wildlife carers and rescuers must be able to undertake rescue, care and rehabilitation work, as necessary”*
 25. Stop the use of non-selective, inhumane poisons and use alternative measures instead.
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6. Care

Priorities and Concerns

Minimum care requirements for animals are long overdue, and their inclusion in this Act is a positive step, however, once again these requirements do not go far enough to protect animals, particularly when there are exemptions that allow them not to be met.

Gaps

The issue is the ambiguity of the care requirements. For example, *“appropriate food and water to maintain health and vitality”*⁵³ Unless there are minimums set, definitions of appropriate may vary wildly, as can definitions of vitality.

Impacts

Downgrading some offences from ‘cruelty’ to ‘care’ offences weakens the Act. It creates the impression that these actions have a lesser importance than under previous laws, despite this Act recognising in law that animals are sentient and therefore the impact of cruelty on them is significant, and the consequences for acts of cruelty should be commensurate with this.

Unintended Consequence

The provision that care offences can become cruelty offences if the outcome of not meeting the care recruitment could cause harm, is also a ridiculous provision and provides a potential loophole that can be exploited by those accused of animal cruelty in the future. It is difficult to conceive of any situation where neglecting to provide nutrition, a safe environment, health care, or opportunities for interaction would NOT lead to animal harms, especially as the Act recognises mental as well as physical harm. Yet this framework creates a potential defence where people could argue that their actions were not likely to lead to harm, or that they believed that they had made adequate provisions to meet the care requirements. Since the care requirements are so ambiguous, what the carer claims they believed was adequate may very well not be, but with no minimum standards, the argument may be a legally acceptable defence under these definitions.

⁵³ <https://engage.vic.gov.au/download/document/28580>

Recommendations:

26. Create mandatory regulations without exemption, with independent oversight.
 27. Ensure that offences under the *POCTA Act* must retain equivalent status under the animal care and protection laws.
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7. Cruelty

Priorities and Concerns

This policy position contains many contradictions. It states that mutilating an animal is a cruelty offence, yet in other areas of the Act the castration of lambs is permitted without pain relief and allowed to be performed by non-vets. *'Any action (including loading, crowding or confining an animal) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to the animal would be a general cruelty offence under the new laws.'*⁵⁴ Failing to provide food to an animal a person is in charge of is also a cruelty offence, yet animals are permitted to be transported around the country for days at a time, left waiting at docks on hot days, and given no food or water. The Act acknowledges that cruelty to animals may be physical or mental, yet still permits exemptions which allow both types of cruelty to occur.

Additionally, the new Act recognises that *'An act of cruelty to an animal may normalise, provoke or perpetuate further cruelty to animals and humans, especially if the conduct is carried out for personal or commercial gain.'*⁵⁵ Yet this is the very definition of intensive animal production ("farming") practices, which are allowed under the new Act, as exemptions from cruelty.

*'Any action (including administering a substance) conducted in a way that causes or would likely cause unreasonable harm, pain or distress to the animal would be a general cruelty offence.'*⁵⁶

Unless the goal is to kill the animals painfully over many hours with 1080 poisoning, then the poison user is excepted from complying with the new animal care and protection laws.

Also, the use of spurs is specifically mentioned as cruel (though permitted for use in rodeos, which are granted an exception), yet flank straps, a device designed solely to be cruel, by causing discomfort and pain and provoking the animal to buck⁵⁷ for the entertainment of humans, is not mentioned.

⁵⁴ <https://engage.vic.gov.au/download/document/28580>

⁵⁵ <https://engage.vic.gov.au/download/document/28580>

⁵⁶ <https://engage.vic.gov.au/download/document/28580>

⁵⁷

<https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-associated-with-bull-riding/#:~:text=Use%20of%20flank%20straps%20and%20spurs&text=It%20applies%20pressure%20to%20the,to%20make%20them%20buck%20more.>

These conflicting messages negate the Act's goal of seeking to provide greater clarity on what is and is not permitted; instead they send a strong message that cruelty is permitted when there is an incentive for allowing it to continue.

Gaps

There are inconsistencies within the new Act, but also across the different state jurisdictions. This disparity could result in vast differences between offences conducted by those who operate across state borders, whether inadvertently or deliberately to minimise risk. See Table 2 for a comparison between Victoria's current *POCTA* and jurisdictions that define animal cruelty.

The extremely low rate of successful prosecutions is a universal theme, for example, 53 out of 10,745 complaints is not significant enough to deter future cruelty offences. Rather, it sends the message that people are more likely to 'get away with it'. Additionally, the universality of low rates shows that a legislative definition of cruelty does not make a tangible difference to the number of complaints investigated or prosecution outcomes.

Impacts

Cruelty offences are not in line with community expectations when there are many exceptions and exemptions throughout the Act designed to maintain the current standards of legally accepted animal cruelty.

Unintended Consequence

The exemptions create inconsistency regarding what is considered cruel for different species of animals. For example, keeping a cat in a cage for too long may be defined as cruel, but keeping a pig in a sow stall is not.

Table 2. Summary of Cruelty Legislation in Australia by State

Source: Compilation of data from RSPCA documents and [sentencingcouncil.vic.gov.au](https://www.sentencingcouncil.vic.gov.au)

Jurisdiction	Definition of Cruelty	Maximum Penalty	Sentencing Outcomes
<p>Victoria</p> <p><i>Prevention of Cruelty to Animals Act (VIC)</i></p> <p>Section 9</p>	<p>None</p>	<p>Cruelty</p> <p>250 PU (\$46,230) or 12 months' imprisonment for an individual</p> <p>600 PU for a body corporate</p> <p>Aggravated cruelty</p> <p>500 PU (\$92,460) or 2 years' imprisonment for an individual</p> <p>1200 PU for a body corporate</p>	<p>Cruelty complaints investigated by the RSPCA in 2020-21:</p> <p>10,745</p> <p>Complaints successfully prosecuted:</p> <p>53 (0.5%)</p> <p>Source: RSPCA⁵⁸. [1]</p> <p>Most common types of penalties:</p> <ol style="list-style-type: none"> 1. Fine (60%) 2. Bond (16%) 3. CCO (10%) 4. Wholly suspended sentence (5%) 5. Prison (4%) 6. Other (4%) <p>Average fine: \$1,355</p> <p>Average prison term: 3 months</p> <p>Source: Sentencing</p>

⁵⁸ <https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202020-2021.pdf>

			<p>Advisory Council⁵⁹. [2]</p> <hr/> <p>[1] RSPCA Australia Annual Statistics 2020-2021.pdf</p> <p>[2] Animal Cruelty Offences in Victoria (sentencingcouncil.vic.gov.au)</p>
<p>New South Wales</p> <p><i>Prevention of Cruelty to Animals Act (NSW)</i></p> <p>Section 4(2)</p>	<p>Section 4 Definitions</p> <p>(2) For the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably—</p> <p>(a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated,</p> <p>(b) over-loaded, over-worked, over-driven, over-ridden or over-used,</p> <p>(c) exposed to excessive heat or excessive cold, or</p> <p>(d) inflicted with pain.</p> <p>(2A) For the purposes of subsection (2) (a), the pinioning of a bird is not an act of cruelty if it is carried out in the manner prescribed by the regulations.</p> <p>(3) For the purposes of this Act, a person commits an act of aggravated cruelty upon an animal if the person commits an act of cruelty upon the animal or (being the person in charge of the animal)</p>	<p>Cruelty</p> <p>400 PU (\$44,000) or 1 year imprisonment or both for an individual</p> <p>2000 PU for a corporation</p> <p>Aggravated cruelty</p> <p>1000 PU (\$110,000) or 2 years' imprisonment for an individual</p> <p>5000 PU for a corporation</p>	<p>Cruelty complaints investigated by the RSPCA in 2020-21:</p> <p>13,838</p> <p>Complaints successfully prosecuted:</p> <p>86 (0.6%)</p> <p>Source: RSPCA⁶⁰. [1]</p> <hr/> <p>[1] RSPCA Australia Annual Statistics 2020-2021.pdf</p>

⁵⁹ https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Animal_Cruelty_Offences_in_Victoria.pdf

⁶⁰ <https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202020-2021.pdf>

	<p>contravenes section 5 (3) in a way which results in—</p> <p>(a) the death, deformity or serious disablement of the animal, or</p> <p>(b) the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.</p>		
<p>Northern Territory</p> <p><i>Animal Welfare Act 1999 (NT)</i></p> <p>Sections 9(2)-(3)</p>	<p>Section 9 Cruelty</p> <p>(2) Without limiting subsection (1), a person in charge of an animal is cruel to the animal if the person:</p> <p>(a) fails to ensure the animal receives the minimum level of care; and</p> <p>(b) intends to cause harm to the animal.</p> <p>(3) Without limiting subsection (1), a person is cruel to an animal (whether or not the person is in charge of the animal) if the person does any of the following:</p> <p>(a) causes the animal unnecessary suffering;</p> <p>(b) having caused the animal unnecessary suffering (including accidentally), fails to take reasonable action to mitigate the suffering;</p> <p>(c) uses on the animal a device prescribed by the Regulations to be inhumane;</p> <p>(d) subjects the animal to treatment prescribed by the Regulations to be cruel.</p> <p>Section 10 Aggravated cruelty</p> <p>(1) A person commits an offence if:</p> <p>(a) the person is cruel to an animal; and</p> <p>(b) the cruelty causes the death of, or</p>	<p>Cruelty</p> <p>150 PU (\$23,550) or 18 months' imprisonment</p> <p>Aggravated cruelty</p> <p>200 PU (\$31,400) or 2 years' imprisonment</p>	

	<p>serious harm to, the animal; and</p> <p>(c) the person intends to kill or seriously harm the animal.</p> <p>(2) In this section:</p> <p>serious harm, for an animal, means:</p> <p>(a) harm that endangers the animal's life; or</p> <p>(b) harm that results in the animal being so severely injured, so diseased, or in such physical condition, that it would be cruel not to destroy the animal; or</p> <p>(c) harm that consists of, or results in, serious</p>		
<p>South Australia</p> <p>Animal Welfare Act (SA)</p> <p>Section 13(3)</p>	<p>Section 13 Ill treatment of animals</p> <p>(3) Without limiting the generality of subsection (1) or (2), a person ill treats an animal if the person—</p> <p>(a) intentionally, unreasonably or recklessly causes the animal unnecessary harm; or</p> <p>(b) being the owner of the animal—</p> <p>(i) fails to provide it with appropriate, and adequate, food, water, living conditions (whether temporary or permanent) or exercise; or</p> <p>(ii) fails to take reasonable steps to mitigate harm suffered by the animal; or</p> <p>(iii) abandons the animal; or</p> <p>(iv) neglects the animal so as to cause it harm; or</p> <p>(c) having caused the animal harm (not being an animal of which that person is the owner), fails to take reasonable steps to mitigate the harm; or</p>	<p>Cruelty</p> <p>\$20,000 or 2 years' imprisonment</p> <p>Aggravated cruelty</p> <p>\$50,000 or 4 years' imprisonment</p>	<p>Cruelty complaints investigated by the RSPCA in 2020-21:</p> <p>4,398</p> <p>Complaints successfully prosecuted:</p> <p>16 (0.4%)</p> <p><u>Source: RSPCA⁶¹ [1]</u></p> <p>Types of penalties:</p> <ol style="list-style-type: none"> 1. Fine 2. Bond 3. Prison <p>Average fine:</p> <p>\$1,535</p>

⁶¹ <https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202020-2021.pdf>

	<p>(f) causes the animal to be killed or injured by another animal; or</p> <p>(g) kills the animal in a manner that causes the animal unnecessary pain; or</p> <p>(h) unless the animal is unconscious, kills the animal by a method that does not cause death to occur as rapidly as possible; or</p> <p>(i) carries out a medical or surgical procedure on the animal in contravention of the regulations; or</p> <p>(j) ill treats the animal in any other manner prescribed by the regulations for the purposes of this section.</p> <p>(4) A person charged with an offence against subsection (1) (the aggravated offence) may be convicted of an offence against subsection (2) (the lesser offence) if the court is not satisfied that the aggravated offence has been established beyond reasonable doubt but is satisfied that the lesser offence has been so established.</p> <p>(5) It is a defence to a charge of an offence against subsection (2) if the defendant proves that the offence did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.</p> <p>(6) In this section— cause—a person's act or omission causes the death of, or harm to, an animal if the act or omission substantially contributes to the death or harm.</p>		<p>Average prison term: 77 days</p> <p>Source: Morton, R., et al, 'Increasing Maximum Penalties for Animal Welfare Offences in SA – Has it caused Penal change?'. <i>Animals</i> (2018)⁶².</p> <hr/> <p>[1] RSPCA Australia Annual Statistics 2020-2021.pdf</p>
<p>Tasmania</p>	<p>Section 8 cruelty to animals</p> <p>(2) Without limiting the generality of subsection (1)</p>	<p>Cruelty</p> <p>100 PU (\$18,100)</p>	<p>Cruelty complaints investigated by the</p>

⁶² <https://www.mdpi.com/2076-2615/8/12/236>

<p>Animal Welfare Act (TAS)</p> <p>Section 8(2)</p>	<p>, a person is guilty of an offence under that subsection if the person –</p> <p>(a) wounds, mutilates, tortures, overrides, overdrives, overworks, abuses, beats, torments or terrifies an animal; or</p> <p>(b) overloads or overcrowds an animal; or</p> <p>(c) drives, conveys, carries or packs an animal in a manner or position or in circumstances that subjects or subject it to unreasonable and unjustifiable pain or suffering; or</p> <p>(d) works, rides, drives or uses an animal when it is unfit for the purpose; or</p> <p>(e) has possession or custody of an animal that is confined, constrained or otherwise unable to provide for itself and fails to provide the animal with appropriate and sufficient food, drink, shelter or exercise; or</p> <p>(f) abandons an animal of a species usually kept in a state of confinement or for domestic purposes; or</p> <p>(g) has possession or custody of a sick or injured animal and fails to provide veterinary or other appropriate treatment for the animal; or</p> <p>(h) administers to or otherwise uses in respect of an animal an injurious drug or a toxic or noxious substance except for–</p> <p>(i) medical curative purposes; or</p> <p>(ii) scientific research purposes; or</p> <p>(iii) normal management procedures; or</p> <p>(iv) euthanasia; or</p> <p>(v) the purposes of controlling a List A disease as defined in the Animal Health Act 1995 ; or</p> <p>(vi) the purposes of controlling a pest animal in accordance with the</p>	<p>or 12 months’ imprisonment or both for an individual</p> <p>500 PU (\$90,500) for a corporation</p> <p>Aggravated cruelty</p> <p>N/A</p>	<p>RSPCA in 2020-21:</p> <p>2,034</p> <p>Complaints successfully prosecuted:</p> <p>6 (0.3%)</p> <p>Source: RSPCA⁶³ .[1]</p> <hr/> <p>[1] RSPCA Australia Annual Statistics 2020-2021.pdf</p>
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⁶³ <https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202020-2021.pdf>

	pest register; or (i) in the course of any sport or public performance or in the training for any sport or public performance, applies or exposes an electronic device to an animal; or (j) uses a spur, or other like appliance, with sharpened rowels on an animal; or (k) does any other prescribed act.		
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Recommendations:

- 28. Remove exemptions that allow cruelty from the new *Animal Welfare Act* and other animal care and protection laws.
- 29. Create mandatory regulations and guidelines for human interactions with animals.
- 30. Ban the use of sow stalls.
- 31. Ban the use of 1080 and other poisons used to kill animals.
- 32. Ban mulesing.
- 33. Ban jumps racing.
- 34. Ban the use of spurs.
- 35. Ban the use of flank straps.

8. Controlled Conduct

Priorities and Concerns

The new Act recognises that some activities are 'legitimate' but carry such a HIGH risk of harm to animals that they require an increased level of control. This is such a contradictory statement that its inclusion in legislation that purports to recognise animal sentience and protect animal welfare is an embarrassment. There is no justification for harming sentient beings.

To create even greater confusion, some activities are deemed to have 'no legitimate purpose' and therefore they ARE prohibited, yet the line between legitimate and non-legitimate activities appears arbitrary at best. Trap shooting of birds is not a legitimate activity but duck shooting is? Force-feeding of poultry is not a legitimate activity yet giving them antibiotics and growth

promotant hormones indiscriminately so that they grown to a point where their legs cannot support their body weight⁶⁴ is?

Allowing some activities under the guise of legitimacy and prohibiting others sends mixed messages, especially as it appears that those activities deemed legitimate are potentially the activities that contribute the greatest financial gains to their 'carers'.

For example, surgical procedures must be performed by vets, however the castration of lambs under the age of 6 months is permitted to be conducted by non-vets. This weakens the principles of the Act, instead sending the message that animals should be protected, unless it is more financially viable not to.

Gaps

Whilst some activities such as live-plucking of poultry will be banned under the new Act, which is positive, this does not acknowledge that this practice is little used in Victoria. However the sale of products that contain feathers or down from birds live-plucked in other jurisdictions is widespread. In order to effectively enforce the practice of not supporting this cruel activity, there needs to be the addition of legislation that does not allow the sale or dispersal of goods produced using methods that contravene the principles of the new *Animal Welfare Act*.

Shock and aversive collars are not allowed on the grounds of cruelty - unless permitted under the *Domestic Animals Act 1994*. Shock or anti-bark collars cannot be used in Victoria, except under the guidance or written instructions of a vet or dog-trainer.⁶⁵ However, there are no minimum training requirements to become a dog trainer, therefore the advice is potentially being provided by someone not qualified to do so, who does not understand the implications of using punishment as a means of influencing behaviour. Additionally, there is no minimum standard of ongoing monitoring during the period of time the collar is in use, and lastly, the use of these devices is cruel and unjustified. Behavioural issues such as being reactive to other dogs or barking may be a sign of anxiety or stress; the use of these collars creates further anxiety and anticipatory stress and potentially, even fear aggression, which can make the dog dangerously unpredictable. In no way does the use of these devices examine or address the root cause of the problem. Shock and aversive collars are used as a behavioural modification tool by those professionals who lack the skills to address the issues using positive reinforcement techniques, and can sometimes be used by unsuspecting humans who follow "professional" advice even if their instincts say otherwise, and they are concerned for the welfare of their companion animals.

Amongst the multitude of cruel tests carried out on animals in the name of scientific research there are two which have been shown to confer little useful information due to interspecies differences between mice and humans, and yet are still used frequently and regularly. Both the

⁶⁴ <https://www.theguardian.com/environment/2016/apr/24/real-cost-of-roast-chicken-animal-welfare-farms>

⁶⁵

<https://agriculture.vic.gov.au/livestock-and-animals/animal-welfare-victoria/pocta-act-1986/electronic-collars/antibark-and-remote-training-collars>

nose-only forced smoke inhalation tests⁶⁶ and the forced swim test⁶⁷ cause physical and mental distress to animals forced to endure them, and these procedures should be added to the prohibited list of activities which have ‘no legitimate’ purpose under the Act.

Impacts

This policy position acknowledges that pain and unpleasant experiences are required in animal industries in order for those industries to operate.

Unintended Consequence

Allowing activities that carry a high risk to the welfare of animals subverts and weakens the Act. Simply adding a few items to the ‘banned’ list does not go far enough in protecting animals when many other activities continue to be permitted.

Recommendations:

36. Ban the use of 1080 and other poisons.
37. Ban the practice of mulesing.
38. Legislate the pain relief is mandatory for any procedure performed upon an animal that has the potential to cause pain or distress.
39. Legislate that surgical procedures must only be performed by a licensed and qualified veterinarian.
40. Ban the importation and use of shock and aversive collars under any circumstances.
41. Ban the registration and sale of products whose manufacturing processes do not comply with the standards set by the *animal care and protection laws*.
42. Add nose-only forced smoke inhalation tests to the list of banned procedures.
43. Add the forced swim test to the list of prohibited procedures.

9. Framework for specified classes of conduct

Priorities and Concerns

‘This framework would provide that regulations may prescribe controls for some types of conduct so that risks to animals of harm, pain or distress are appropriately managed and that legal and legitimate interactions with animals have clear authority to continue under the new laws.’⁶⁸

If activities carry a high risk to animals, then they should not be permitted. It's inconsistent to

⁶⁶ <https://www.humaneresearch.org.au/forced-to-smoke/>

⁶⁷ <https://www.humaneresearch.org.au/forced-swim-test-at-australian-universities/>

⁶⁸ <https://engage.vic.gov.au/download/document/28580>

recognise that animals are sentient, then undermine this by allowing activities that carry a high risk of causing animals to experience pain and fear.

The only way to appropriately manage these activities is to not permit them. Furthermore, why should these activities have clear authority to continue? The excuses used elsewhere in the laws to justify this, relating to pre existing legislation that can't be contradicted by new legislation, are not sufficient justification.

In short, this section of the Act is a summary of all the cruel activities that are not included in other sections, and which humans may wish to undertake for entertainment, personal or financial gain, or convenience. This policy position then creates a framework that acknowledges these acts are cruel, but decides to allow them regardless. This is the exact opposite of what this Act should be striving to achieve.

Gaps

The increased licensing requirements designed to regulate these 'controlled activities' are irrelevant without ongoing monitoring and compliance activities. Considering the high risk of harm to animals from activities such as killing them, it is hard to comprehend how a licence can make this more palatable and more in line with good welfare outcomes.

This is a particular concern when this section refers to increasing licensing requirements, and policy position 15 describes removing licensing requirements to reduce regulatory burden.

Impacts

The specified classes of conduct contravene the decision-making principles from earlier in the new Act. Using animals for sport or recreation is avoidable and there are less harmful alternatives available to animal testing.

Unintended Consequence

Many activities that carry a high risk of harm to animals exist, but only some are detailed in the Act. If there are no specific details in the Act, only general care requirements will need to be met. For example, factory farmed pigs must meet the care requirement to not be overcrowded, but with no definition of 'overcrowding' (or 'non-crowding'), this still allows them to be kept in small, cramped pens without it being considered cruel.

Recommendations:

44. Define what is a 'legitimate' interaction with animals in view of their recognised sentience. Anything which is not in the best interests of an animal (apart from legitimate medical interventions) should not be permitted.

45. Define mandatory minimum standards of care.

10. Scientific Procedures

Priorities and Concerns

The new Act recognises that, *“When animals are used in scientific research there is a risk for those animals to experience harm, pain and distress.”*⁶⁹ Yet despite this, it still permits animals to be used for scientific research. The purpose of creating new animal care and protection legislation is to protect animals from situations that cause them to experience harm, pain and distress inflicted by humans; inserting an exemption every time there is a goal of allowing a harmful activity to continue unchecked weakens the Act’s protections and compromises its effectiveness.

Gaps

Animals kept in schools as ‘classroom pets’ do not strictly meet the definition of being kept for scientific research, yet the new laws suggest regulating their keeping under the *Animal Welfare Regulations*. Animals should not be permitted in classroom situations under any circumstances and the laws must be written to prohibit this.

Animals in classrooms are subject to rough handling, haphazard care, and conditions which may be noisy to a level and length of time that is distressing for animals. Their care requirements can be difficult to meet, especially over lengthy holiday breaks when schools are closed and the person tasked with their care often has little or no knowledge or training in what is required for the animal’s care. Even if minimum care requirements are set, a classroom environment would struggle to meet the principles of ‘care’ defined in this Act as the very nature of a classroom environment is not conducive to animal welfare. Following ‘principles of decision making’, alternatives should be sought.

Impacts

*“Approximately 90% of drugs found to be safe and effective in preclinical research, of which animal testing is currently mandatory, fail to make it to human clinical use”*⁷⁰ Animal test results of medications have been shown to have poor correlations with human responses and health outcomes,⁷¹ yet they continue to be used and in fact required, for the registration of medicines in Australia.⁷² The impact of allowing scientific studies on animals to be exempt from the requirements of not harming animals results in the pain and suffering of millions of animals each year. This figure cannot be quantified accurately, due to the lack of transparency and inadequate reporting of the number of animals used. Again, following the principles of this Act, alternatives

⁶⁹ <https://engage.vic.gov.au/download/document/28580>

⁷⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6609997/>

⁷¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2746847/>

⁷² <https://www.tga.gov.au/how-we-regulate/supply-therapeutic-good-0/supply-prescription-medicine/application-process/prescription-medicines-registration-process>

should be sought and in fact, many alternative methods of scientific research already exist, such as microdosing and microfluidic chips.⁷³ This section should focus on how humans can be used for scientific study purposes instead of non-human animals.

Unintended Consequence

The requirement to hold or obtain a licence before conducting scientific experiments on animals has been created to give these cruel experiments an air of legitimacy, yet in reality it does nothing but describe how and when you can be cruel to animals. This concept of 'licenced cruelty' compromises the Act's stated purpose of protecting animals.

Recommendations:

46. Allow only the use of non-animal methods of scientific study.
 47. Allow TGA approval for medicines that have not undergone animal studies.
 48. Ban the use of animals in school environments.
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11. Authorised Officers

Priorities and Concerns

This principle appears to do little beyond make administrative changes in the titles and classifications of Authorised Officers. Whilst this change in language may streamline operations, it is made clear that the roles, responsibilities and powers of the officers remain unchanged. Considering the current low rate of successful cases of animal cruelty prosecutions versus the number of reports, it seems likely that if nothing changes systematically, then nothing will change in the outcomes.

Gaps

There is a strong need for an Independent Office of Animal Welfare. This body would be an independent statutory body with responsibility for advising on the protection of animal welfare in Commonwealth-regulated activities. The existence of this body would help to ensure that animal welfare always took precedence over profit or convenience, and improve monitoring and enforcement of animal welfare laws, regulations, and policies.⁷⁴

⁷³ <https://www.humaneresearch.org.au/wp-content/uploads/2022/08/Business-Case-for-Alternatives-August-22.pdf>

⁷⁴ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6712

Impacts

A streamlined administrative process creates little-to-no improvements for animal welfare.

Unintended Consequence

Allowing Authorised Officers to be appointed who have a clear bias, vested or financial interest in the activity and who seek to promote the activity, does not create a situation where animal welfare, care and protection is the priority or the outcome. For example, allowing members of organisations such as 'Greyhound Racing Victoria' to be appointed as the Authorised Officers to monitor greyhound racing, is a clear conflict of interest and does nothing except advance and obfuscate the high death rate of greyhounds.⁷⁵

Recommendations:

49. Create an Independent Office of Animal Protection.
50. Create an Animal Protection/Welfare Ministry.
51. Create an Animal Crime Division of law enforcement.

12. Authorised Officer Powers

Priorities and Concerns

Lowering the threshold for Authorised Officers to enter a property where cruelty is believed to be occurring will hopefully allow more acts of cruelty to be captured and stopped. The requirement for an Authorised Officer to have a reasonable suspicion, rather than a reasonable belief of cruelty is a practical advance, considering the difficulty obtaining evidence of cruelty, without being on the premises. However, crimes against animals are difficult to prove and to prosecute. Between 2011 and 2017 the public made over 11,000 animal cruelty complaints, however, only 3.5% of those complaints resulted in a sentence. One reason is because what the general public considers to be cruel is not cruelty in law.⁷⁶

Gaps

If compliance inspections are only conducted after people are given 'due notice' there is a reduced likelihood of identifying ongoing non-compliance. Compliance inspections need to be conducted randomly and without prior notice, to allow authorised officers to view the reality of a situation.

⁷⁵ <https://greyhoundcoalition-com.webpkgcache.com/doc/-/s/greyhoundcoalition.com/racing-deaths-and-injuries-first-half-2022/>

⁷⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6940924/>

Impacts

The ability of Authorised Officers to euthanise an animal “*because the behaviour of the animal is a danger to other animals or people*”⁷⁷ does not take into account that the animal is in a stressful situation, possibly petrified, and acting in an atypical manner commonly manifesting in symptoms of fear aggression. Fear aggression is a form of self defence which may result in freezing, panting, salivating or trying to flee and then escalating to fear-biting especially if cornered or restrained.

Unintended Consequence

There is also the possibility that the lowering of the threshold for Authorised Officers to enter a property will lead to an increase in situations where irreversible decisions are made that are not in the best interests of animals or humans. Under the Act, an Authorised Officer can euthanise animals; this could be potentially disastrous if, for example, they entered a property where animal hoarding was occurring. These situations require the intervention of mental health experts as well as Animal Care Officers and the consequences of taking action without a sufficient plan could result in loss of trust and a poor outcome for the animals and for the human(s) involved. To an untrained eye, a house with many cats may be reported as ‘cruel’ and the Authorised Officer may enter on this ‘suspicion’, which may result in the euthanasia or removal of perfectly healthy cats, who could be rehomed slowly as part of an ongoing plan.

Conversely, whilst safeguards and thresholds are required to ensure Authorised Officers cannot abuse their powers of entry and investigation, these may also delay help for animals in harmful situations or impede the gathering of evidence to prove cruelty offences.

Recommendations:

52. Conduct compliance inspections both randomly, and with the provision of due notice.
53. Ensure Authorised officers receive mandatory training in mental health first aid and cultural sensitivity.

⁷⁷ <https://engage.vic.gov.au/download/document/28580>

13. Seizure and Disposal of animals

Priorities and Concerns

Legislation regarding the seizure and disposal of animals is a necessary evil. It is imperative that provisions exist to allow the immediate removal of animals from cruel, unsafe situations and place them in situations where their sentience is respected and care requirements are met. However, the ability to enter a premises and to remove animals, creates the potential for this ability to be abused by Authorised Officers either due to a lack of experience and education, preconceived notions, or a lack of skills to deal with challenging situations. Finding the balance between ensuring adequate safeguards exist and that powers are not abused, is a delicate balance and will rely on factors such as ongoing training, the backgrounds and experiences of Authorised Officers and their supervisors, and the details of the animal care and protection laws that are still to be determined.

Gaps

The laws do not allow for the fact that dogs deemed aggressive or with behavioural issues may be reacting to external factors such as being removed from their family and a familiar environment and being restrained. The associated stress and anxiety causes an increase in cortisol levels resulting in increased heart rate and blood pressure and suppressing digestion. Assessing a dog in this situation will not give an accurate picture and should not be used as a predictor of future behaviour.

Impacts

This policy position allows Authorised Officers to seize and dispose of an animal without the possibility of a review (in some circumstances). This could lead to potentially negative outcomes in a number of situations such as animal hoarding or where the circumstances surrounding a case are unclear. The potential for a review must always exist to ensure that all facts are considered when decisions are made and that the best outcomes for animals are achieved.

Unintended Consequence

Under the new laws, animals could be disposed of even whilst court proceedings were ongoing. This could result in irreversible decisions being made and therefore negatively impact animals such as dogs on 'death row' whilst their fate is being decided by lengthy court proceedings.

The housing of dogs in pounds with little to-no human contact could be deemed animal cruelty, as it may be questionable whether the care requirements for that dog are being adequately met. However, this is an oversimplification of the issue where the long-term quality of life of the animal (and the human) need also be considered. Although outside the scope of this consultation, reform is needed throughout the court system in these situations to ensure minimal time spent in unfavourable conditions for the animal, rather than hastening animal

disposal which achieves only a short-term solution for the animals and ignores their long-term welfare needs.

Recommendations:

54. Create an Independent Office of Animal Welfare
 55. Create an Animal Protection/Welfare Ministry
 56. Remove the ability for animals to be disposed of in shorter time frames that have been introduced under the new Act
 57. Remove the ability for animals to be disposed of whilst court proceedings are still taking place.
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14. Enforcement Toolkit

Priorities and Concerns

The expanded structure of notices, undertakings and orders provides flexibility in enforcing animal welfare outcomes. However, without sufficient surveillance and follow-up post issuing of notices, there is little power to protect animals regardless of how robust the enforcement framework is.

Gaps

The consequences for those who do not comply with control orders are not sufficient to act as a deterrent in many situations. For example, despite multiple court appearances, fines and prohibitions against owning animals, it can still be more profitable for puppy farm and kitten mill operators to continue selling animals bred and raised in horrific and cruel conditions, and pay the fines, than cease their actions.^{78,79,80}

Additionally, the number of Authorised Officers available to respond to complaints in a timely manner is insufficient, as is the number available to provide ongoing monitoring of compliance in situations where court and control orders exist.

⁷⁸ <https://www.abc.net.au/news/2022-04-04/couple-accused-of-illegal-kitten-sales-face-court/100965066>

⁷⁹ <https://geelongindy.com.au/news/18-05-2022/couple-fined-over-animal-cruelty-charges/>

⁸⁰ <https://www.theage.com.au/national/victoria/notorious-duo-charged-with-new-cruelty-offences-for-alleged-kitten-breeding-20201215-p56nnv.html>

Impacts

When we review the numbers of reported cruelty offences (10,745 reports to the RSPCA in 2020-21 in Victoria⁸¹ alone) , clearly the current ‘Enforcement Toolkit’ structures to punish and deter further cruelty and to enforce orders that attempt to promote behavioural change are inadequate. It is unclear how much additional benefit will be conferred from the addition of the new ‘enforceable undertakings’. It may assist in creating better conditions for animals from those who committed acts of cruelty through ignorance rather than malice or lack of concern or responsibility.

Unintended Consequence

Allowing a decrease in the penalty unit punishments for non-compliance with a “notice to comply’ sends the wrong message about how serious the new animal care and protection laws are about animal care and protection. The justification that a person can also be charged with the original offence and therefore the net penalty does not decrease, does not send a strong enough message about how the legislation views animal cruelty and is not in line with community values around animal cruelty.

Recommendations:

58. Ensure offences under the *POCTA Act* maintain equivalent status under the animal care and protection laws.
59. Ensure Authorised Officers receive adequate and ongoing training regarding the new Enforcement Tools. (The details of the requirement may be specified in the Regulations)

15. Co-regulatory approved arrangements

Priorities and Concerns

Formulating a formal structure to recognise where there are regulatory arrangements that are outside the norm helps to improve consistency. However, the fact that there are enough of these situations to require a policy position is a concern; regulatory activities should be conducted by independent Officers, not potentially biased co-regulators.

⁸¹ <https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%202020-2021.pdf>

Gaps

There is no list of requirements, or even guiding principles, for what kind of situation would determine if a co-regulator was appropriate, or a co-regulatory statement was appropriate to allow.

Impacts

Removing “regulatory burdens” can also remove safeguards for animals. Broadening who can be responsible for regulating how humans interact with animals and removing licence requirements undermines the policy positions identified earlier in the Act.

Unintended Consequence

The goal of ‘reducing regulatory burdens’ is at odds with references earlier in the plan to increase the use of licences to regulate activities that pose high risks of harm to animals. These contradictory statements not only undermine the arguments posed earlier for increasing regulatory burdens, but risk creating confusion for end users.

Recommendations:

60. Ensure policy positions within the Act do not contradict or contravene each other.
61. Ensure regulatory services are only provided by independent authorities.

16. Other administrative arrangements

Priorities and Concerns

The new act seeks to set up two new funds, one of which is the animal care and protection Fund, to help people and animals who are working to promote animal welfare. Over recent years we have seen a rise in so-called welfare organisations being established by the very people who use and harm animals for their own purposes, to humane-wash their activities.

For example the ‘Wetland Centre ’in Geelong is a taxpayer-funded clubhouse for duck shooters⁸² who conduct questionable community animal activities such as taking primary school students out to trial duck caller whistles used to attract ducks for recreational shooting. The volunteers at the centre are members or supporters of ‘Field and Game’ an organisation whose members participate in and promote hunting. Even when the members of the Wetland Centre do participate in any potentially conservational programs such as building breeding boxes, the

⁸² <https://www.premier.vic.gov.au/bellarine-gets-new-wetland-education-centre/>

purpose for this is not to support vulnerable waterbird populations, but to grow duck numbers in order that there will be more available for them to shoot and to justify the calling of future duck seasons.

Horrifyingly, these are the types of organisations that could apply for grants from the animal care and protection Fund under the current proposed structure, as their stated aims appear to meet the requirements to access funding. There must be a requirement that any organisation or person who accesses funding must not stand to gain in any way that advances their personal agenda(s) or finances; the funds must only be used in the genuine best interests of animals.

Gaps

When making decisions, the Minister or Department may request information from the Expert Advisory Committee. Considering the complexity of decisions they are required to make, seeking independent advice should be a requirement, not a choice.

Impacts

The Expert Advisory Committee will have broad powers to direct decision-making (although they will not directly make the decisions themselves). As industry experts and leaders they may be working or invested in animal industries in ways where their decision-making guidance may directly or indirectly benefit them. This potential conflict of interest may influence and bias the advice they give.

Unintended Consequence

Without adequate protections, the funds intended to promote animal care and protection, could be accessed by the very people we are trying to protect animals from.

Recommendations:

62. Ensure that access to the animal care and protection Fund is restricted to those who act in the best interests of animals at all times and who have no conflict of interest.
 63. Ensure that members of the Ethics Advisory Committee are independent and have no ties or conflicts of interest which could influence their ability to provide unbiased advice.
 64. Establish a requirement to obtain independent advice for all decisions that influence animal welfare outcomes.
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Conclusion

The animal care and protection Act is being developed to replace *POCTA*. There are some positive aspects like the recognition of sentience and the fact that Codes of Practice will be replaced by Regulations which are enforceable.

However the exemptions to the proposed law make a mockery of the very name of the Act - *care and protection*. It is meaningless to have an Act with exemptions which allow actual gross cruelty to occur, often culminating in the ultimate harm: death. The Act protects some animals but classifies others differently, which is blatant speciesism.

This proposed *Animal Welfare Act* will only live up to its name if the sentience of all animals which it recognises, is acknowledged and exemptions and exceptions that disallow this recognition are removed. We must stop abusing animals for the sake of profit or convenience.

The climate crisis is going to challenge the survival of many species even more than happens currently. We have witnessed that just this week with the floods in Victoria causing the death of farmed and wild animals, not to mention the toll on infrastructure and humans.

The Animal Justice Party recommends that the new *animal care and protection laws* supersede any other laws which allow the essence of the Act to be disregarded.