

DEPARTMENT OF JOBS, PRECINCTS AND REGIONS

ANIMAL WELFARE ACT

AN ANIMAL LIBERATION SUBMISSION



AL.ORG.AU



We acknowledge the
Traditional Owners of
country throughout
Australia and recognise
their continuing
connection to land, waters
and culture.

We acknowledge that this
document was written on
land stolen from and
never ceded by the
Gadigal People.

We pay our respects to
their Elders past, present
and emerging.





We don't have a duty to **speak** for the animals;
we have an obligation to be **heard** for the animals.

Matt Ball (2006)

DOCUMENT DETAILS

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ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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ABBREVIATIONS

AAWS	Australian Animal Welfare Strategy
APO	Animal protection organisation
COPs	Codes of Practice
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
DJPR	Department of Jobs, Precincts and Regions
GMA	Game Management Authority
IOAW	Independent Office of Animal Welfare
POCTA	The Prevention of Cruelty to Animals Act
RSPCA	The Royal Society for the Prevention of Cruelty to Animals
SOPs	Standard Operating Procedures



Photo: Farm Transparency Project

**WHEN WE
SUFFER, WE
SUFFER AS
EQUALS AND IN
THEIR CAPACITY
TO SUFFER, A
DOG IS A PIG
IS A BEAR IS A
BOY**

WOLLEN (2012)



Department of Jobs, Regions and Precincts

We present this submission on behalf of Animal Liberation.

Animal Liberation is a non-profit animal rights organisation which has operated in the field of animal justice for over four (4) decades. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and protection across the country. As per the information requested by the Department, we have and continue to pursue the rights of all animals across all activities of their use and management. Our 1800 Cruelty Hotline Officer has a lengthy history in providing Victorian citizens with support and advice concerning a wide range of species, including those in Metropolitan, regional and rural regions or areas. We are also highly active in interstate animal welfare issues.

We are proud to be Australia's longest-serving animal rights organisation and proud to work for this organisation and our ethos of interspecies equality. Our mission is to permanently improve the lives of all animals through education, action and outreach.

We thank the Department for their objective and informed consideration of the following submission and look forward to the release of the draft Bill this proposal process informs. We expect the commentary provided in the following submission to be considered in the development of this draft Bill and its provision to be made publicly available prior to its introduction and debate in Victorian Parliament.

Sincerely,

Alex Vince
Campaign Director

Lisa J. Ryan
Regional Campaign Co-ordinator

Barrie Tapp
1800 Cruelty Hotline Officer

FOREWORD

Animal welfare legislation is the central tool used to define, penalise and deter acts of animal cruelty (Morton et al. 2020). Worldwide, they have existed for centuries (Glasgow 2008). Though they ostensibly apply to animals included within their definitions, their application can depend upon a range or combination of clauses, auxiliary laws or subordinate instruments, and the policies of their empowered authorities (White 2014). Such laws have been enacted in each State and Territory. Their specific object and purpose is the prevention of cruelty to animals and/or the promotion of their welfare (Ellis 2010). Though law and jurisprudence concerning the protection of animals is varied, controversial and often contradictory, this reflects current attitudes towards their treatment and animals more generally; our attitudes towards animals is as complex and varied as the laws crafted to facilitate their protection (Schaffner 2011).

Australia's animal protection legislation and its associated mechanisms have been widely criticised (White 2007; Ellis 2010; Dale and White 2013; Ellis 2013). These criticisms have been applied to all classes and categories of animal, including companion, farmed, wild, native and introduced (Thiriet 2007; Ellis 2010; Geysen et al. 2010; Mundt 2015). Some have focused on the presence of exemptions or defences contained within Acts which "legalise considerable cruelty" in certain contexts or for certain purposes (Ellis 2010). Examples of this can be found in the Act currently under consideration (see, for instance, Section 11). Others argue that tougher sentencing for cruelty offences is needed (Sharman 2002; Reid 2011; Markham 2013). Some maintain that structural examples of bias and conflicts of interest are of paramount concern or that the current deficiencies require the establishment of a robust national framework (Thiriet 2007; Ellis 2010; Cao 2015; Ford 2016). Others still have targeted the current legal status of most animals as items of property as the underlying problem from which many others arise (Gregory 1994; Francione 1995; Bryant 2008; Favre 2010; White 2016a).

Many of these criticisms have been expressed elsewhere in the Western world, indicating that the perceived problems are more generalised and widespread than the Australian experience (Wolfson and Sullivan 2004; Kedgley 2013). Within this complex, there are a range of competing viewpoints which culminate in different conclusions and solutions. This is significantly amplified by the fact that animal law is a relatively new field in Australia and there is a comparative lack of research into its application (Boom and Ellis 2009; Morton et al. 2020).

Victoria has a long history of animal protection. The first animal protection organisation (APO) was founded in Victoria six years after the first anti-cruelty laws were encoded in the colony in 1871 (Petrow 2012; Chen 2016). At the time, animal protection was enforced exclusively through police legislation (White 2016b). It has since been transferred primarily to the RSPCA (Radford 2001; White 2007). The law under review and subject to reform under the present proposals scheme has been the primary piece of animal welfare legislation in Victoria for over 30 years. The supporting documents provided by the Department acknowledge that this means the Act in its current incarnation lacks clarity and that “some parts do not work in practice as well as they should” (Department of Jobs, Precincts and Regions 2020a). The documents also note that as the Act was introduced prior to the establishment of sound scientific evidence of serious consequence concerning the treatment of other animals.

There is general consensus that POCTA is outdated, complex, largely ineffective, and fails to meet its purpose and objectives. These failures have been evident for many years, and most recently were consistently highlighted through written submissions and oral testimony provided during the inquiry into the impacts of animal rights activism on Victorian agriculture and the previous inquiry into RSPCA Victoria. In this regard, it is strikingly similar to corresponding legislation and contexts in other states. This has led some equivalent Departments of State Government to conduct reviews or initiate reform of their corresponding legislation (see Appendix 1). For example, NSW engaged in a review of its corresponding legislation June. Similar reviews are planned in other jurisdictions (Department of Agriculture and Fisheries 2020). The present reform process constitutes a similar attempt to modernise animal welfare legislation in accordance with current animal welfare science (Morten et al. 2020).

The following submission provides considered and informed responses which address the scope of the current public consultation and responds to the 12 high-level proposals included in the supporting documents, as well as inclusion of general commentary and recommendations.

I HOLD THAT **THE MORE HELPLESS A CREATURE**
THE MORE ENTITLED IT IS
TO PROTECTION BY MAN
FROM THE CRUELTY OF HUMANKIND

MAHATMA GANDHI



1.0 INTRODUCTION

The Victorian Government is undertaking a public consultation process to inform the development of the draft Bill which will be released for further consultation before being introduced into the Victorian Parliament. The proposals are not intended to cover everything needed for the forthcoming Act, or corresponding instruments like Regulations or COPs, which will be developed at a later time. The proposals are merely intended to inform the proposed Bill. Prior to providing responses to the proposals, we believe it is necessary to explore the following considerations which provide the platform, and form much of the underlying basis, of the proposals.

- 1.0.1 Animal Liberation believes that progressive and meaningful animal welfare reform and corresponding legislation, including subordinate instruments, must consider the following key points. Each of these must apply a consistent and enforceable level of accordance with the Bills guiding spirit and ensure justice with no underlying discrimination, preference, selectivity or exceptionalism.

BOX 1

- 1.0.1 prioritise a policy and legal framework that safeguards and improves animal welfare;
- 1.0.2 include objective and informed collaboration that advances and promotes meaningful investment into animal welfare;
- 1.0.3 enable education and communication that improves attitudes, behaviours, knowledge, skills and compliance;
- 1.0.4 ensure compliance and enforcement that is robust, efficient, effective, workable and meets contemporary community expectations.

- 1.0.2 We appreciate the Victorian Government's recognition of the shortcomings inherent in the current animal welfare framework and its recognition that there is an urgent need to modernise and structurally improve Victorian animal welfare legislation. We appreciate the opportunity to provide the following submission on proposals for a new animal welfare Act and expect our commentary to be considered in the development of a draft Bill for that Act. We look forward to the release of this draft Bill prior to its introduction and debate in Victorian Parliament.

- 1.0.3 In many ways the present reform process is an ambitious attempt to rectify acknowledged deficiencies in current animal welfare law in Victoria. This is evidenced by the documentation provided by the Department. It is paramount that a progressive and robust Act as the primary and key animal protection legislation ensures that all

- 1.0.3 subservient and subordinate legislation, including Regulations, as well as associated Standards or Codes apply equal, consistent and corroborating protections. These must also be robust and practical in terms of enforcement and outcomes. In short, getting the Act right is essential. For these reasons, we strongly suggest that the forthcoming legislation be entitled the Animal Protection and Welfare Act for clarity and consistency in purpose.
- 1.0.4 We believe that progressive animal welfare legislation cannot continue to pick and choose selectively according to perceived human need and intended use. The supporting papers acknowledge that this is the present configuration of the framework. Due to the significant scale of suffering that is inflicted on farmed animals, land and marine alike, these species have formed a primary focus of Animal Liberation's submission and our consideration of the scope of the proposed framework and the high-level proposals intended to inform it.
- 1.0.5 The following submission will provide ample evidence showing that the current regulatory regime is neither in line with modern animal welfare science nor meets growing community expectations regarding corresponding welfare issues. The present reform process represents a significant opportunity for the framework to be modernised and aligned with contemporary animal welfare science. We expect it to adequately and transparently rectify the significant deficiencies acknowledged in the supporting papers.
- 1.0.6 We appreciate the Victorian Government's recognition of the shortcomings inherent in the current Act and its recognition that there is an urgent need to modernise and structurally improve the Victorian animal welfare framework. We appreciate the opportunity to provide the following submission its proposals and expect our commentary to be considered in the development of a draft Bill for that Act. We look forward to the release of this draft Bill prior to its introduction and debate in Victorian Parliament.

A NOTE ABOUT THE PROPOSALS & THEMES

N1 The documents provided by the Department contain twelve (12) high-level proposals grouped under three (3) themes:

N1.1 safeguarding animal welfare (Theme 1);

N1.2 a simplified and flexible legislation (Theme 2) and;

N1.3 a better compliance and enforcement model (Theme 3).

N2 Many of the proposals are described as intending to “improve existing provisions” under POCTA, though some will introduce new features into what would become the State’s primary animal welfare legislation and its governing framework. For example, sentience is not currently contained within the language of POCTA. The proposals suggest the adoption of an approach which recognises animal sentience (see sl.1).

N3 The proposals provided by the Department in the Directions Paper are formulated against preexisting provisions in POCTA (Department of Jobs, Precincts and Regions 2020a: 6). For example, under the current provisions covering “prohibited conduct”, reference is made to “unreasonable pain or suffering” (see Section 9 of POCTA, for example). Proposal 1.3 suggests the introduction of “general escalating offences” which people must not carry out upon animals while Proposal 1.4 proposes the establishment of “a single regulatory framework” which oversees the commission or performance of controlled procedures.

N4 The Department’s feedback portal maintains that the proposals contained in the currently discussed proposals are not intended to cover all components which will be necessary for the establishment of a new animal welfare Act and its corresponding framework. Those not included are referred to as “technical topics” and include emergency response powers and the powers bestowed upon authorised officers.

1.1 ANIMAL SENTIENCE

PREMISE

1.1.1 Generally, sentience refers to the capacity to experience or endure states both physiologically and psychologically (Kotzmann 2020a). It requires a degree of consciousness and intellectual capacity. The term is derived from the Latin verb 'sentire', meaning "to feel" (Mancy 2015). In dictionary definitions, sentience is defined as the ability to "experience feeling", be "responsive to or conscious of sense impressions" and the capacity to feel via these senses (Kotzmann 2020b). Sentience in other animals has been asserted as fact by scientists in the 2012 Cambridge Declaration of Consciousness (Bekoff 2012).

1.1.2 The Australian animal protection agency, Voiceless, notes that a common description of sentience is "the capacity to feel pleasure and pain" and is a state in which an animal is "capable of being aware of its surroundings, its relationships with other animals and humans, and of sensations in its own body", including hunger, suffering and grief (Voiceless 2018). RSPCA Australia has described sentience in animals similarly. It defines sentience as "the capacity of an animal to experience different feelings", including both positive and negative emotions. The organisation extends the concept to "an animal's ability to learn from experience and [from] other animals, assess risks and benefits and make choices" (RSPCA Australia 2019).

"If you watch a Labrador retriever bound towards you, tail wagging and tongue hanging out, it appears that he or she is experiencing happiness. In contrast, observing a Whippet or Weimaraner pull his or her ears back, pace around, whine and paw suggests that the dog is feeling insecure and anxious. While such inferences may be anthropomorphic, research in relation to animal capabilities is clear that most animals are sentient"
- Kotzmann (2020)

1.1.3 Experts have concluded that "evidence of animal sentience is everywhere" (Bekoff 2013). One study conducted a review of the scientific literature, covering over 2,500 articles on the subject, and concluded that there is "a greater tendency for studies to assume the existence of negative states and emotions in animals, such as pain and suffering, than positive ones like joy and pleasure" (Proctor et al. 2013). This is consistent with the historical trend of people who readily deny emotions such as joy, pleasure and happiness to other animals while accepting that the same animals can experience pain, anger or suffering (Harnad 2016). Though variations may exist, experts have warned that adopting "a single sliding scale" which ranks species along a continuum of consciousness will "inevitably neglect important dimensions" of sentience (Birch et al. 2020). Denying autonomy, for example, effectively denies an animal's

- 1.1.3 interest in not suffering, experiencing positive emotions and their overall welfare (Garner 2011).
- 1.1.4 The recognition of animal sentience has been identified as one way in which the ambiguities of existing animal welfare law can be clarified and corresponding protections strengthened. It can be regarded as a crucial step in modernising animal welfare legislation (Doraisamy 2019). For example, the recognition of sentience in law “seems to nullify all and any attempts to deny [animals] legal protection simply because they are not sufficiently appealing, emotionally close, or economically useful to us” (Blattner 2019).
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PROPOSAL(S)

- 1.1.5 Though the supporting documents provided by the Department cite the concept of sentience as a new addition to animal welfare governance in Victoria, it was acknowledged in the Victorian Animal Welfare Action Plan in 2017 (Department of Economic Development, Jobs, Transport and Resources 2017).
- 1.1.6 Recognising sentience in other animals is described within the Directions Paper as a reflection of the knowledge that “caring for an animal is different to caring for your vehicle, house or other inanimate property”. This indicates that the Department is taking the first step in formally recognising that other animals “feel, perceive and experience” states in a negative or positive way similar to our own. The Directions Paper maintains that “while the very existence of animal welfare legislation implicitly acknowledges animal sentience”, current law does not explicitly recognise its existence (Department of Jobs, Precincts and Regions 2020a: 17).
- 1.1.7 The supporting papers provide the framework for establishing sentience in the forthcoming Act. It does so by providing three (3) options for recognising sentience in other animals. These are outlined in the table on the following page:

PROPOSED OPTIONS FOR RECOGNISING ANIMAL SENTIENCE		
OPTION 1	OPTION 2	OPTION 3
Refer to sentience in the Objects of the Act.	Refer to sentience in the Principles of the Act.	Refer to sentience in the definition of the Act.
The Objects section of an Act set out its purposes and aims. This section can help resolve uncertainty or ambiguity about its intent and assist courts interpret what it is designed to achieve.	Principles provide decision-makers with guidance about what they should consider in the interpretation and implementation of the Act, including how to exercise powers provided under it.	Definitions assist understanding of what the legislation means. This option could mean that sentience is included as one of the definitions of animals covered by the Act.

RESPONSE

- 1.1.8 The concept of sentience in other animals has a history dating back to the 19th century (Ibrahim 2007). Its recognition in law provides significant opportunities to improve protection under animal welfare legislation (Blattner 2019). A growing cohort of the public see other animals as sentient and, therefore, believe that they ought to be treated as such (Futureye 2019). Up to 90% of respondents indicate concern for animal welfare in Australia (McGreevy et al. 2019).
- 1.1.9 Animal sentience has been recognised in other Australian and international animal welfare legislation. The Directions Papers notes some examples of this (Department of Jobs, Precincts and Regions 2020a: 17). For example, the ACT became the first Australian jurisdiction to recognise animals as “sentient beings” in its animal welfare reform in 2019 (Evans 2019; Jarvis-Bardy 2019). Prior to the ACT amendment to its corresponding Act in 2019, the 2008 Australian Animal Welfare Strategy (AAWS) included a definition of a “sentient animal” as “one that has the capacity to have feelings and to experience suffering and pleasure” (Department of Agriculture, Fisheries and Forestry 2008).
- 1.1.10 Many laws which ostensibly recognise animal sentience only extend the concept to a limited range of species. For example, the 2019 ACT law contained amendments to its preexisting animal welfare law by embedding into its purpose a recognition that “animals are sentient beings that are able to subjectively feel and perceive the world around them”. However, it narrowly extends the select categories of animal despite the definition of the term “animal” in the amended

1.1.10 Act (Kotzmann 2019b). Similar conclusions have been reached concerning international laws which have embedded the recognition of sentience in their animal welfare laws, many of which narrowly apply the recognition exclusively to domestic or companion animals (Anonymous 2018). Critics have thus argued that the “practical implications” of the ACT law “are not as far-reaching as they sound” (Evans 2019).

“The weight of evidence indicates that humans are not unique in possessing the neurological substrates that generate consciousness. Non-human animals, including all mammals and birds, and many other creatures, including octopuses, also possess these neurological substrates” - The Cambridge Declaration on Consciousness (2012)

1.1.11 Sentience is frequently applied according to the belief that humans are superior and that some animals are more or less deserving of recognition than others (Zuolo 2019). Such an approach lacks an evidentiary basis and is inconsistent with sound science (Fox 1989). The current application of sentience in many equivalent laws also fails to recognise the unique individual capacities of species and the unique differences between individuals within a single species. The value and capacity of these differences should not be considered or determined based on their use or purpose. This factor must be thoroughly and transparently accounted for in the forthcoming Bill.

1.1.11a For example, POCTA currently applies to all vertebrate species, including mammals, birds, fish, amphibians, reptiles and a select number of crustaceans (lobsters, crabs and crayfish). It presently applies to cephalopods (i.e., octopi, squid or cuttlefish) “in some circumstances” (Department of Jobs, Precincts and Regions 2020a). It applies to all mammals excluding the human animals. There is ample evidence indicating that cephalopods are conscious and are capable of actively reasoning about how to mediate the world around them and respond in a reflective (conscious) rather than reflexive (instinctual) manner (King and Marino 2019). This has led some Governments to grant consideration of their welfare on par with vertebrates (Mather 2019).

“It [recognising sentience] will provide a more consistent, principled basis to the interpretation, application and development of the law. Implicitly, sentience is recognised by virtue of prohibiting cruelty, for instance. Why else would it be wrong to be cruel to an animal if an animal isn’t sentient?” - Goodfellow (2019)

1.1.12 Similarly, there is significant evidence suggesting that all canines possess the same degree of sentience. This applies regardless of category, intended use or purpose. While the Victorian Government has recognised the need to address the specific needs of dogs in breeding facilities through legislative reforms,¹ other canines do not enjoy the same level of standard of protection. For example, dogs used in greyhound racing, hunting, as working dogs or in medical or scientific experimentation or research do not have their sentience recognised and protected in the same manner or to the same degree. Wild canines are routinely killed in ways that would be illegal if enacted upon a companion animal possessing the same biology and claim to sentience. Similar conclusions can be reached about cats and other canid species, such as foxes. Nor is the same level of compliance monitoring and offence enforcement. While contemporary cases of suffering in the puppy farming industry generate significant public condemnation, such killing is accepted practice in pounds and shelters where housing standards and veterinary needs are frequently non-compliant and “duty of care” is unenforced (Wahlquist 2017; Campion 2020). The forthcoming framework must account for these significant discrepancies.

1.1.13 The recognition of sentience implies that all species and individuals within those species are granted equal consideration and value, corresponding to equal protection of their welfare under the forthcoming framework. We believe that any animal who is conscious, aware of their environment and has the capacity to experience pain or discomfort must be included in the definition of “animal” in any forthcoming legislation. This must include cephalopods, crustaceans and fish. It must also provide for emerging evidence. A mechanism similar to the precautionary principle applied in environmental matters should be considered (Birch 2017; Jones 2017; Blattner 2019).

1.1.13a Sentience in other-than-human animals has been globally accepted and increasingly recognised in equivalent legislation. However, recognition itself often does not translate into meaningful or enforceable animal welfare or protection laws. The notion of sentience is often applied in a subjective and selective manner according to values and priorities at odds with the intention its recognition is believed to have.

1.1.14 We believe that the present reform process offers the opportunity to rectify inconsistencies between equivalent or corresponding legislation in other Australian states and international jurisdictions. We believe that in order to be consistent, the recognition of sentience and its corresponding provisions and protections should apply equally to all animals whose sentience has been established or is likely to be established. This includes cephalopods and

¹ See the Domestic Animals Amendment (Puppy Farms and Pet Shops) Act 2017, for example.

- 1.1.14 prenatal embryos (Brown 2015; Ribatti 2016; Sneddon et al. 2018). This corresponds with sound science. To do otherwise is not reflective of current animal welfare science.
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RECOMMENDATIONS

- R1 That the draft Bill adopt and include animal sentience and provide a definition of the concept as per the evidence outlined above and cited in the supporting documents (e.g., Animal sentience means that animals have the capacity to be being aware of their surroundings, their relationships with other animals and humans, and of positive and negative sensations in their own body).
- R2 That the adoption of animal sentience is not made subservient to auxiliary documents, such as Codes of Practice, and apply equally to all animals regardless of their utility or intended use (i.e., that the recognition apply to all categories of animals).
- R3 That all species known or shown to experience emotion or reactions to stimuli be included in any reference to sentience in any forthcoming legislation.
- R4 That the mechanism of a precautionary principle is investigated as an option in decision- making concerning the application of this proposal.

1.2 MINIMUM STANDARD OF CARE

PREMISE

- 1.2.1 Our laws currently provide humanity with dominion over other animals. This places a corresponding burden upon our behaviour and any activities involving them. As such, we have a range of obligations relative to our position of power (Arbon and Duncalfe 2014). As a result, the establishment of a duty of care for animals and its embedding in animal protection legislation is becoming a central component of many animal welfare laws (Ministry for Primary Industries 2020). Though they are framed in various ways in equivalent legislation elsewhere, each intends to provide a mechanism whereby it is a requirement to provide the basic needs in accordance with current animal welfare science.
- 1.2.2 The Directions Paper acknowledges that there is a broad consensus between both industries which use animals and the wider community that minimum standards or duties of care should be applied to animals. These should extend beyond prohibitions on cruelty. It notes that corresponding legislation in other Australian jurisdictions “exceed the current POCTA Act requirements” insofar as they have adopted greater standards of care (Department of Jobs, Precincts and Regions 2020a: 19). The present reform is thus an attempt to place the Victorian framework on par with equivalent frameworks.
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PROPOSAL(S)

- 1.2.3 The Policy Proposals paper acknowledges that POCTA currently focuses on responding to cruelty after the fact. It notes that this element represents a limitation on its efficacy. This is a significant limitation in the current framework insofar as it is reactive rather than proactive in the interpretation and application of its contents. The paper also notes that international legislation and laws in other Australian jurisdictions have developed provisions which “place equal weight on safeguarding animal welfare” (emphasis added) (Department of Jobs, Precincts and Regions 2020b: 2). These rationales inform the basis for the proposed introduction of a requirement for those in charge or responsible for animals to provide “a minimum standard of care”.
- 1.2.4 The proposal to introduce a requirement under the forthcoming framework to provide a minimum standard of care represents a new element in Victoria’s animal welfare legislation. It is not currently included in POCTA (Department of Jobs, Precincts and Regions 2020a). Its adoption would require a person or people in charge of

1.2.4 an animal or animals to provide “an acceptable level of care”, including the provision of biological necessities and consideration of care in the commission or performance of other relevant activities. Importantly, this standard would depend upon the behaviour of a person or people and extend to any person or people who interact with an animal, including animals classified as wildlife or “pests” (Department of Jobs, Precincts and Regions 2020a: 20).

1.2.5 The Directions Paper notes that the primary challenge in setting “duty of care” requirements is the consideration of how information and evidence is collected and presented to demonstrate that a person or people have or have not met their obligations. It maintains that in order to ensure that such an obligation is enforceable, it must focus on conduct. That is, it must refer to the actions a person is obliged to carry out in order to meet the obligation. The Directions Paper explains that such a measure would permit consideration of “reasonable measures” and contain provisions that acknowledge circumstances out of a person’s control. The Paper references emergency situations as an example of the latter (Department of Jobs, Precincts and Regions 2020a: 20).

“The simplest and clearest motivation for taking animal welfare seriously is the recognition that pain is and of itself a bad thing, and that to inflict significant amounts of it unnecessarily is wrong” – Julian Baggini

1.2.6 The Directions Paper acknowledges that similar provisions are in force in other Australian and international jurisdictions and that these require a range of obligations to be met in order to abide by the duty of care (see the table below). The Tasmanian Animal Welfare Act 1993 is not included in the Directions Paper but is present in the table below because it contains explicit reference to “duty of care”. Other equivalent legislation contains similar provisions while not explicitly referencing the existence of a “duty of care” (Department of Jobs, Precincts and Regions 2020a: 19). Some, such as the Animal Welfare Act 2002 (WA), include many of the activities cited in the table. For example, Section 19 contains provisions in which a person commits an offence if an animal experiences harm through transportation, confinement, restraint or suffers as a result of improper provisions of food, water or shelter. Others, such as the Prevention of Cruelty to Animals 1979 (NSW), include prohibitions on failing to provide a range of the obligations included below.

2 Section 5(3), for example, states that a person in charge of an animal must “exercise reasonable care, control or supervision” to prevent cruelty from occurring and “take such reasonable steps as necessary” to relieve pain if it does occur. It also stipulates that an animal is to be provided with appropriate veterinary treatment when necessary.

AUSTRALIAN LEGISLATION AND DUTY OF CARE OR OBLIGATIONS		
LEGISLATION	SECTION	DUTY OR OBLIGATION
Animal Care and Protection Act 2001 (QLD)	Section 17	A person breaches their duty of care if they do not take reasonable steps to appropriately provide an animal's needs for: (a) food and water; (b) accommodation or living conditions; (c) ability to perform normal behaviours; (d) treatment of disease or injury and; (e) proper handling, including confinement or transport
Animal Welfare Act 1992 (ACT)	Section 6	A person breaches their duty of care if they do not take reasonable steps to appropriately provide an animal's needs for: (a) appropriate food and water; (b) appropriate treatment of illness, disease or injury; (c) appropriate shelter or accommodation; (d) a clean and hygienic living environment; (e) appropriate grooming and maintenance, including exercise; (f) opportunity to engage in normal behaviours; (g) appropriate care for the animal's wellbeing.
Animal Welfare Act 1993 (TAS)	Section 6	A person who has the care or charge of an animal has a duty to take all reasonable measures to ensure the welfare of the animal.

1.2.7 The concept of a “minimum standard of care” is found elsewhere in the proposals. It is tied to auxiliary documents crafted by non-government bodies, governance and compliance. For example, the Directions Paper notes that many industries are regulated by non-government bodies (see s2.4). For instance, these bodies may craft standards “in response to market trends and demands” (Department of Jobs, Precincts and Regions 2020a: 12). The Department maintains that these standards are “sometimes higher than the minimum legislated standards” despite not being recognised under state legislation. Many are not currently recognised under POCTA. The Directions Paper explains that such private regulatory mechanisms are not included in the current framework “even if they clearly demonstrate practice above minimum standards” under relevant State law (emphasis added). Proposal 2.4 contains options regarding this discrepancy.

1.2.8 Similarly, the minimum standard doctrine is reflected in the compliance mechanisms proposed. For example, under proposals concerning the monitoring of compliance the Directions Paper explains that augmented powers could “proactively monitor

1.2.8 compliance” by facilitating “a shift to requiring people to meet a minimum standard of care”. The Directions Paper maintains that this “may require enhanced proactive monitoring tools” (Department of Jobs, Precincts and Regions 2020a: 12).

RESPONSE

1.2.9 It is important that any proposal which stipulates a minimum standard of care is governed under a clear and comprehensive definition of what constitutes cruelty. It is equally as important that subordinate instruments, such as auxiliary Regulations, are reviewed and amended as necessary to ensure that they are aligned with the relevant clauses encoded in the forthcoming Act. POCTA does not currently contain an explicit definition of what constitutes cruelty.

IS CRUELTY DEFINED IN EQUIVALENT LEGISLATION?			
STATE	LEGISLATION	IS CRUELTY DEFINED?	SECTION
VIC	<i>Prevention of Cruelty to Animals Act 1986</i>		Section 8
NSW	<i>Prevention of Cruelty to Animals Act 1989</i>		Section 4
QLD	<i>Animal Care and Protection Act 2001</i>		Section 18
SA	<i>Animal Welfare Act 1985</i>		Section 3
WA	<i>Animal Welfare Act 2002</i>		Section 19
TAS	<i>Animal Welfare Act 1993</i>		Section 8
ACT	<i>Animal Welfare Act 1992</i>		Section 6A
NT	<i>Animal Welfare Act</i>		Section 9

VIC: Section 8 contains a series of actions which constitute cruelty, NSW: Section 4 contains a definition of cruelty as an act “committed upon an animal”, including an omission, which causes an animal “unreasonable, unnecessary or unjustifiable” pain or suffering, QLD: Section 18 contains provisions outlining actions in which a person is cruel to an animal, including “unjustifiable, unnecessary or unreasonable” pain, SA: Section 3 contains a definition of serious harm which mandates that the euthanasia of an animal experiencing significant suffering is cruel, WA: Section 19 contains provisions outlining actions in which a person is cruel to an animal, including “unreasonable and unjustifiable pain or suffering”, ACT: Section 6A defines cruelty as “doing, or not doing, something to an animal that causes, or is likely to cause, injury, pain, stress or death to the animal that is unjustifiable, unnecessary or unreasonable in the circumstances” or “abusing, terrifying or tormenting the animal”, NT: Section 9 contains provisions outlining actions in which a person is cruel to an animal, including the infliction of “unnecessary suffering”.

1.2.9a For example, POCTA currently requires the provision of shelter for animals. However, the variables are as numerous as the species they apply to. The provision of shelter should be tailored to the provision of a safe, hygienic and comfortable environment which prevents suffering and cruelty and allows the expression of behaviours normal to the species. For example, a cow or a sheep in a paddock or sale yard may technically be in a safe environment. However, without shade on hot days or clear cool water, they will suffer. Without sufficient protection from temperatures or readily available and hygienic water, they will also suffer. Similarly, a pig in a concentrated animal feeding operation ('CAFO') or industrial production facility may technically be in a safe environment if employees follow applicable and relevant laws and subordinate instruments. However, without the capacity to exercise behaviours normal to the species, they will also suffer (van de Weerd and Ison 2019). They may also suffer as a result of the inherent nature of their confinement.

“We must fight against the spirit of unconscious cruelty with which we treat the animals. Animals suffer as much as we do. True humanity does not allow us to impose such sufferings on them. It is our duty to make the whole world recognise it. Until we extend our circle of compassion to all living things, humanity will not find peace” – Albert Schweitzer

1.2.10 If the proposed Act is to be the primary legislation, it must be robust and deliberate in its design to meet its objectives and corresponding community expectations. The framework must raise the bar and set the example through maximum, not minimum standards which meet more than physical needs. This is in line with emerging community expectations (Futureye 2019). It must encompass and account for complex emotional needs as well as recognition that individuals within a species deserve consideration informed by the recommendations provided above.

1.2.11 The setting of standards is not sufficient to prevent cruelty without clearly defined and explicitly provided definitions and a robust platform to enable monitoring and compliance of any established standards. We hold that the concept of a minimum standard of care represents the thresholds of cruelty and is based upon the premise that its standards and intent is to avoid cruelty rather than prevent it (Mellor and Stafford 2008).

RECOMMENDATIONS

- R5 That proactive policy rather than reactive legislation is recognised as urgently required and is adequately accounted for in any forthcoming Bill.
- R6 That Recommendations 1-4 are considered in the formulation of any duty of care obligation.
- R7 That the elements included in equivalent legislation are codified in the forthcoming Bill (i.e., that a person or people are in breach of their duty of care obligations if they fail to provide appropriate and adequate food, water, living conditions, veterinary treatment and ample opportunities to exercise or express behaviours typical of the species).
- R8 That subordinate or auxiliary instruments accurately and appropriately provide for and enforce duty of care obligations in concert with the relevant provisions proposed in the forthcoming Bill.
- R9 That instruments described in R8, including Codes of Practice ('COPs'), Standards of Practice ('SOPs') and/or Guidelines, receive a comprehensive and impartial review in order to ensure that the information they contain is appropriate and functionally aligns with the provisions proposed.

1.3 OFFENCES FOR PROHIBITED ACTS

PREMISE

- 1.3.1 Animal welfare or protection legislation is often the central tool used to define, penalise and deter acts of animal cruelty or behaviours which result in animal suffering (Morton et al. 2020). Latest statistics confirm that over 10,000 complaints of animal cruelty are lodged by the Victorian public per year. Of these, only 1.1% resulted in prosecution (Morton et al. 2020). Victorian prosecutions have dropped since the 2016 inquiry into the Victorian RSPCA (Comrie 2016). See Appendices 2, 3 and 4.
- 1.3.2 Currently, under POCTA, aggravated cruelty refers to a person or people who commit an act of (undefined) cruelty which “results in the death or serious disablement” of an animal (see Section 10). POCTA also provides defences to both cruelty and aggravated cruelty under Section 11. For example, acting “reasonably” in the commission of an act or “reasonably” omitting an act is a defence if the person is defending themselves³. It is also a defence if the person was carrying out an activity in accordance with a COP⁴.

“If a group of beings from another planet were to land on Earth - beings who considered themselves as superior to you as you feel yourself to be to other animals - would you concede them the rights over you that you assume over other animals?” - George Bernard Shaw

PROPOSAL(S)

- 1.3.3 The Directions Paper notes that POCTA currently provides “a specific list of actions or behaviours that constitute cruelty”. It also acknowledges that such a framing “can be limiting” because “not every specific example [of cruelty] is clearly covered” (Department of Jobs, Precincts and Regions 2020a: 11). As noted above, cruelty is

3 see Section 11(1)

4 see Section 11(2)

1.3.3 undefined in the current Act. This forms the basis for the proposed introduction of “a set of general escalating offence categories” which cover activities, behaviours and actions which “a person must not do to animals”. The Policy Proposals paper maintains that while these categories would focus on “the nature of a person’s treatment of animals, “the extent of harm inflicted” would be codified under the forthcoming framework as “an aggravating factor” (Department of Jobs, Precincts and Regions 2020b: 2).

1.3.4 The Directions Paper maintains that the cruelty provisions in POCTA “generally work well” but acknowledges that they “can be limiting”. It notes that this system is limiting because the list does not contain “everything that could be cruel” (Department of Jobs, Precincts and Regions 2020a:20). For example, POCTA currently cites baiting, luring, trap-shooting, the sale of prohibited traps, the setting or using of prohibited traps, illegal transportation of animals and the breeding of animals with heritable defects (see Sections 13, 14, 15, 15AB, 15A and 15C, respectively). However, some of these apply to specific species, notably companion animals or declared “pest” species. For instance, Section 15C principally applies to companion animals provision applies principally to companion animals as it is not uncommon for farmed animals to be born with significant health problems. The latter is covered by subordinate instruments not included in POCTA, such as euthanasia procedures under various standards or guidelines (Holmes 2018). Other policies are created by specific industries, such as Dairy Australia’s industry euthanasia policy (Dairy Australia 2020). This illustrates the need to ensure that any proposed provisions which become codified in the forthcoming Act are aligned with subordinate documents and conducting a comprehensive review of these if necessary.

CRUELTY OFFENCES UNDER THE CURRENT ACT	
SECTION	PROVISIONS
Section 9(1)	Section 9(1) describes behaviours which constitute cruelty. The common offences include: deliberate cruelty, improperly loading, crowding or confining, doing or omitting to do something which causes or is likely to cause unreasonable pain or suffering, failing to provide food, drink or shelter and failing to provide or seek veterinary treatment
Section 10(1)	Section 9(1) describes the more severe offence of aggravated cruelty associated with actions or omissions which cause serious disablement or death.
Section 11A(1)	Section 11A(1) describes procedures which are prohibited unless carried out by a veterinarian. These principally apply to dogs, cats, horses, sheep and reptiles.
Section 13	Section 13 contains provisions for offences related to animal fighting, baiting and luring.

1.3.5 Similarly, the Directions Paper acknowledges that there are limits to the Act’s ability to enable intervention when there is a risk rather than a report of animal cruelty. It also acknowledges that provisions in the current Act provide “limited tools for encouraging and enforcing compliance”, despite prosecution being “a key tool” of the Act. Notably, the Discussion Paper explains that “legal proceedings do not always drive behavioural change” (Department of Jobs, Precincts and Regions 2020a: 21). This is amply shown by convicted offenders pleading guilty to additional cruelty charges (Agriculture Victoria 2020).

1.3.6 The Directions Paper explains that current provisions concerning prohibited procedures in POCTA would be amended to provide “a single regulatory framework” applicable to people performing “controlled procedures” on animals (Department of Jobs, Precincts and Regions 2020a: 24). For more on “controlled procedures” see Section 1.4. The Paper also explains that the relevant provisions concerning the defining and prohibiting of cruelty to animals relate to actions, behaviours or omissions specific to an individual or group of animals. It emphasises that such provisions do not equate to bans or legal prohibitions on such activities. Rather, they refer to actions that contravene proposed requirements set out elsewhere in the forthcoming framework (e.g., the duty of care obligations described in s1.2).

PROPOSED ESCALATING OFFENCE CATEGORIES			
OPTION 1	OPTION 2	OPTION 3	OPTION 4
Failures to provide a minimum standard of care.	Conduct causing or likely to cause unreasonable harm, pain or distress.	Aggravating factors to Category 1 and 2 offences.	Conduct where a person or people deliberately cause harm.
<p>For example</p> <p>a) failing to take reasonable steps to provide appropriate accommodation</p> <p>b) failing to comply with a mandatory Regulation, Code of Practice or National Standard</p>	<p>For example</p> <p>a) wounding of improperly handling an animal.</p>	<p>For example</p> <p>a) an act or omission resulting in serious harm or death.</p>	<p>For example</p> <p>a) activities such as torture, animal fighting, luring and other blood sports.</p>

RESPONSE

- 1.3.7 The current reform process represents and offers an opportunity to improve and modernise this element of the current animal welfare framework in Victoria. As described in our response to Proposal 1.2, POCTA, as it stands today, is reactive rather than proactive. This is acknowledged in the Directions Paper. It maintains that “any animal welfare legislation must have the ability to respond to acts of cruelty as well as to deter people from being cruel”. The chief way in which this is achieved under the law is through the establishment and application of punishments for offences (Department of Jobs, Precincts and Regions 2020a: 20).
- 1.3.8 The majority of equivalent Australian laws, including Victoria’s current animal welfare Act, do not explicitly define animal cruelty. Many include reference to “unnecessary”, “unjustifiable” or “unreasonable” pain or suffering under provisions prohibiting animal cruelty⁵ Others do define animal cruelty yet refer to “unnecessary suffering” as a prerequisite to its commission⁶. The absence of an explicit definition is a significant shortcoming that obstructs clarity and should be rectified during this reform process.
- 1.3.9 The current oversight and enforcement system require reports of animal cruelty to be registered with a range of sources, including charities (the RSPCA) and various departments and agencies of the State Government. For example, reports concerning domestic or non-farmed animal cruelty cases are registered by the Victorian RSPCA, a local council or the Victorian Police Service (VPS). Reports regarding farmed animals are registered by the Department of Economic Development, Jobs, Transport and Resource (DEDJTR) or the VPS. Cases concerning wildlife are registered by the Department of Environment, Land, Water and Planning (DELWP) or the VPS. Cases concerning the actions, behaviour or outcomes of hunters are registered by the Game Management Authority (GMA) or the VPS. Cases of suspected or alleged animal cruelty concerning animals not covered by these include horses or dogs in their respective racing industries. These cases, particularly horses, can be referred to the Racing Integrity Commissioner directly, however, this body cannot investigate criminal offences.
- 1.3.10 A range of Memorandums of Understanding (MOUs) exist between the authorities cited in s1.3.9. The inquiry into the Victorian RSPCA

5 see, for example, Section 9 of the Northern Territory’s Animal Welfare Act or Section 4 of New South Wales’ Prevention of Cruelty to Animals Act 1989.

6 see, for example, Section 6A of the ACTs Animal Welfare Act 1992.

- 1.3.10 included a recommendation to review these to ensure that their arrangements reflect the operating environment of the inspectorate (see Recommendation 11 in Comrie 2016). These must be considered and assessed to ensure that their contents align with the proposals included in the present reform process and the spirit of the overall framework.
- 1.3.11 Criminal investigations and proceedings regarding animal cruelty offences attract significant attention from the media and the public. There is a range of State laws and regulations which relate to animal cruelty. These range from the Act under review in the present case to those covering children,⁷ youth, domestic violence⁸ and gambling.⁹ Historically, there have been instances of significant public outcry over the leniency of sentencing meted out to animal cruelty offenders (Bita 2017; Beavis 2018). However, very little research has been published concerning the outcomes of these offences in Australia (McGorry and Bathy 2019). For some time, Governments across Australia have been aware of the relative leniency with which animal cruelty offences are treated (ABC News 2010; Morton et al. 2018). Often, these are cited with consideration that those who commit acts of violence or cruelty to animals also perpetuate crimes against people, such as domestic violence (Ascione 1997; Gullone et al. 2002; Beirne 2004; ABC News 2010; Piper 2015; Animal Legal Defense Fund 2018; Coorey and Coorey-Ewings 2018; Hovel 2019).
- 1.3.12 We acknowledge that under the current framework, crimes against animals are often difficult to prove and are therefore difficult to prosecute. We maintain that the public perception and understanding of cruelty may vary considerably from legal definitions. It is important to thoroughly and transparently consider that this is a significant failure of the Act. It is also an important factor to consider when allocating the authorities empowered under the forthcoming Act. Animal Liberation believes that escalating offences will improve and streamline the monitoring, compliance, enforcement and punishment under the principal animal protection Act. Any adoption of an escalating offences model must be consistent and not exclude or provide exemptions or defences based upon the species or category of animal in question.
- 1.3.13 We firmly maintain that people possess an ethical and moral duty to refrain from inflicting pain or suffering on an animal for any reason and regardless of the animals perceived purpose. As such, we believe that the law must reflect this and provide substantial legal mechanisms to deter or prevent the commission of these acts. Should an act result in or subsequently lead to pain or suffering,

7 see, for example, the Children, Youth and Families Act 2005.

8 see, for example, the Family Violence Protection Act 2008.

9 see, for example, the Gambling Regulation Act 2003.

- 1.3.13 every effort should be made to alleviate it. This should be applied equally in cases wherein harm to animals is the sole offence and in cases in which harm to humans is involved.
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RECOMMENDATIONS

- R10 That animal cruelty is explicitly defined in the forthcoming Bill.
- R11 That any adoption of the proposals concerning reforms to the offence provisions in the forthcoming Bill be aligned with relevant subordinate instruments, such as COPs or industry policy.
- R12 That subordinate instruments are comprehensively reviewed to ensure that their contents and intent align with proposed amendments to the offence provisions in the forthcoming Bill.
- R13 That any preexisting MOUs between the authorities responsible for the enforcement of compliance with the forthcoming Bill be reviewed in order to ensure that their contents and scope align with the spirit and intent of the new framework.

1.4 CONTROLLED PROCEDURES

PREMISE

1.4.1 See subsection 1.3.1-2.

PROPOSAL(S)

1.4.2 Controlled procedures are described within the Proposals Paper as those which involve “painful or unpleasant” procedures “sometimes required to benefit the animal and/or animal management considerations”. This framework implies that a predetermined amount or degree of suffering is acceptable for certain purposes or in the service of certain outcomes. Examples of controlled procedures cited in the Directions Paper include castration, dentistry, ear-tagging and branding (Department of Jobs, Precincts and Regions 2020a: 25).

1.4.3 The supporting papers also explain that the current framework regulating these procedures is dispersed across several laws and their corresponding instruments, including Regulations, COPs and Standards. For example, the Directions Paper notes that POCTA does not “explicitly prohibit some unnecessary animal husbandry procedures”, such as those carried out for cosmetic purposes (Department of Jobs, Precincts and Regions 2020a: 24). The Paper goes on to explain that POCTA currently “lacks a central framework for assessing the necessity of procedures”, providing the mandatory requirements necessary for those who perform them or a structure to assess the provision of pain relief (Department of Jobs, Precincts and Regions 2020a: 24).

1.4.4 Under Proposal 1.4, the Policy Proposals Paper suggests the establishment of “a single regulatory framework” for the performance of “controlled procedures” (Department of Jobs, Precincts and Regions 2020b: 2). These procedures differ from those described under Proposal 1.3 insofar as they are not proposed to be forbidden under the forthcoming Act.

1.4.5 According to the Directions Paper, the establishment of such a framework “would cover all procedures that involve the interference with or manipulation of an animal’s body in a way that could cause harm, pain or distress” (Department of Jobs, Precincts and Regions 2020a: 24). It would do so by creating criteria for defining what a

1.4.5 “controlled procedure” is and categorising these procedures in a series of circumstances under which they may be carried out. The Directions Paper explains that these criteria would consider:

PROPOSED CRITERIA FOR DEFINING A CONTROLLED PROCEDURE	
SHORT-TERM	LONG-TERM
The degree to which the procedure would likely cause unreasonable harm, pain or distress as well as the invasiveness and nature of the procedure and availability of pain relief.	The necessity of performing the procedure, the quality of life of the animal once the procedure has been performed and the likely recovery period from the procedure.

1.4.6 The proposal suggests that auxiliary Regulations would list procedures by category and provide clauses concerning restrictions or conditions attached to them, including the ability to perform them (Department of Jobs, Precincts and Regions 2020a: 22). These categories of controlled procedures are:

PROPOSED CATEGORIES FOR CONTROLLED PROCEDURES		
RESTRICTED	PROHIBITED	SCIENTIFIC
<p>Procedures that are painful or otherwise affect animal welfare. People would require a level of competency and/or need to comply with requirements under the Regulations in order to perform these procedures.</p> <p>Examples provided include castration and tail docking.</p>	<p>Procedures in this category would continue the 'prohibited procedures' approach under the current POCTA and would be prohibited for all people.</p> <p>There would be exceptions for registered veterinarians who perform procedures for therapeutic purposes.</p> <p>Examples of these exceptions could include ear cropping or de-clawing.</p>	<p>The existing definition and framework for the use of animals in science and teaching under POCTA would be maintained in principle. It would be reviewed to ensure consistency with the overarching aims of the current reform.</p>

1.4.7 The Directions Paper maintains that the provision of these in Regulations would provide flexibility in updating requirements in response to advancing scientific evidence or the introduction of new practices or procedures. The rationale for establishing these in

- 1.4.7 Regulations is that “amending an Act typically takes a lot longer than amending a Regulation because a Parliamentary process is required” (Department of Jobs, Precincts and Regions 2020a: 24).
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RESPONSE

- 1.4.8 Animals across all categories are routinely subjected to painful procedures (Weary et al. 2006). This has led some studies to conclude that pain should be alleviated, with requirements under law or auxiliary policy to do so (Goldberg 2018). This follows the logic that if analgesics improve the welfare of an animal, it is reasonable to infer that pain was experienced and potentially prevented (Anil et al. 2010).
- 1.4.9 The recognition that controlled procedures involves “painful or unpleasant” experiences directly ties consideration of this section to others, such as Proposal 1.1. This is because sentience is considered “essential” to most definitions of pain (Walters 2018). Studies have consistently shown that pain is a relatively difficult concept to accurately or consistently identify, define and measure for a range of reasons (Anil et al. 2010). Some have claimed that this is because it is primarily an expression associated with humans (Landa 2012). As a result, animal pain has historically been a controversial theme in anti-cruelty legislation (Anil et al. 2010). Despite this history of narrow application, there has been a growing focus and attention on the issue of pain in animals, particularly as a result of a corresponding increase in awareness of animal welfare (Underwood 2002; Weary et al. 2006; Landa 2012).
- 1.4.10 Though some definitions are exclusive to adverse impacts on bodily tissues (i.e., physical pain or suffering), there is increasing recognition that pain experienced by animals includes both sensory (physiological) and emotional (psychological) components (Sneddon and Gentle 2000; Underwood 2002). Psychological suffering has become an important factor in similar reviews of corresponding Acts elsewhere in Australia. If, for example, Proposal 1.1 is adopted, it should be inclusive of the considerations provided in the recommendations above.
- 1.4.11 Given that an adoption of animal sentience in the forthcoming Bill recognises the capacity of animals to experience or endure an array of emotive states, it is reasonable to require this to translate into a structural recognition that animals are legitimate subjects of moral consideration as well (Harrison 1991). As such, we believe that

- 1.4.11 sentience, pain and psychological suffering should be form a key consideration in the current reform process and be applied to the provisions regarding controlled procedures.
- 1.4.12 Accepting that other-than-human animals are sentient requires the corresponding acknowledgement that pain and suffering can be experienced by many species. The history of animal welfare science indicates that simply because there is insufficient data or evidence does not preclude those species from sentience. In order to be aligned with modern science, the law must be consistent in all instances and based upon available and prevailing evidence rather than economics or political influence.
- 1.4.13 As such, agri-business must adjust current practices and operations to avoid the commission of controlled procedures. At a minimum, any controlled procedures must be accompanied by a mandated recovery period and the application of pain relief. These correspond to public perceptions about animal welfare, veterinary advice and the sustainability of industries in general (Coleman 2007; Chaplin 2013; Australian Veterinary Association 2014; Downing and Gaynor 2015). Similar reform has been made in other jurisdictions (Ministry for Primary Industries 2016).
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RECOMMENDATIONS

- R14 **That the mechanism of a precautionary principle is investigated as an option in decision- making concerning the application of this proposal.**
- R15 **That psychological pain or suffering is included in any consideration of controlled procedures.**
- R16 **That subordinate instruments are comprehensively reviewed to ensure that their contents and intent align with proposed amendments to the offence provisions in the forthcoming Bill.**

2.1-2 CONSISTENCY AND CLARITY OF THE FRAMEWORK

PREMISE

- 2.1-2.1 Establishing a clear and consistent framework is a prerequisite of a robust and enforceable law. To do so, it must be drafted in an unambiguous and precise manner. In order to be unambiguous, it must be crafted to aid and enhance consistent comprehension (Chen 2015).
- 2.1-2.2 The forthcoming Bill should contain clear provisions that are precisely and deliberately drafted with the considerations of s2.1-2.1 in mind. It should be accessible to every day Victorians who can expect to gain an understanding of its purpose and contents without difficulty or reference to secondary documents or multiple pieces of legislation. As such, it must be drafted in plain English to ensure these are adequately met (Barnes 2010).
- 2.1-2.3 The supporting documents explain that while POCTA is the primary legislation in Victoria for the management of animal welfare, the Act does not apply in all situations or circumstances. This represents an inconsistency noted by the Directions Paper. For example, it states that the fact that POCTA does not apply in all situations is “one of the more confusing aspects for the community and can create challenges for regulators and those who are trying to comply with the rules” (Department of Jobs, Precincts and Regions 2020a: 29). An example of this is that some actions, when carried out in compliance with the requirements of other Acts, are exempt from the remit of POCTA (Department of Jobs, Precincts and Regions 2020a: 29). As such, compliance with these Acts functions as a defence under a POCTA prosecution. The network of Acts is provided in the Appendices of this submission.
- 2.1-2.4 The Directions Paper acknowledges that these exemptions and the absence of a test under other Acts “creates the potential for unacceptable conduct not to be regulated” (Department of Jobs, Precincts and Regions 2020a: 29). This is a serious admission that we commend the Department for acknowledging. We expect this significant flaw to be rectified during this reform process.

PROPOSAL(S)

2.1-2.5 The Directions Paper contains two (2) options for addressing the existence of the exemptions described in s2.1.3 (Department of Jobs, Precincts and Regions 2020a: 30). These are:

OPTIONS FOR ADDRESSING EXEMPTIONS	
OPTION 1	OPTION 2
<p>Continue to allow some broad exemptions to the application of the Act where they meet the objectives of the new Act.</p>	<p>Apply the requirements of the new animal welfare Act to all animals and activities, with appropriate exceptions for lawful activities.</p>

2.1-2.6 Option 1 involves allowing broad exemptions to remain in place where they meet the objectives of the new Act. This means that activities which conflict with the requirements of the new Act are exempt by virtue of permissions located in other Acts. It is justified in the Directions Paper on the basis that people who undertake activities covered by the current exemptions would have access to their requirements, duties and obligations in the same place, even if these activities conflict with requirements under the forthcoming Bill (Department of Jobs, Precincts and Regions 2020a: 30).

2.1-2.7 Option 2 involves applying the requirements of the new Bill to “all animals and activities”, with the proposed exception of some lawful activities (Department of Jobs, Precincts and Regions 2020a: 30).

2.1-2.8 The Directions Paper contains two (2) options for reforming the current framework. Each includes the forthcoming Bill and set minimum standards. Both also include Regulations that cover administrative rules and requirements, as well as mandatory requirements applicable to specified animals and actions. The primary difference between the options is the detail prescribed in the Regulations (Department of Jobs, Precincts and Regions 2020a: 33). The options are:

REFORM OPTIONS: SUPPORTING REGULATIONS AND CODES	
OPTION 1	OPTION 2
<p>A limited set of Regulations supported by mandatory Codes of Practice that demonstrate compliance with the Act, complemented by best practice Guidelines</p>	<p>A comprehensive set of Regulations supported by best practice Guidelines (no Codes of Practice)</p>

2.1-2.9 Option 1 involves Regulations that contain a limited range of mandatory requirements applicable to specified animals and corresponding uses, including permissions, exceptions and requirements concerning controlled procedures (see s1.4). The majority of the details expressing the requirements to be met in this option would be contained within the COPs. This option also involves Guidelines that have no legal power and whose contents are thus non-mandatory (optional).

2.1-2.10 Option 2 involves Regulations that the Directions Paper describes as “more comprehensive” than those under Option 1 (Department of Jobs, Precincts and Regions 2020a: 33). The requirements under this option would be mandatory and legally enforceable. Similarly, to Option 2, this proposal contains Guidelines that have no legal power and whose contents are thus non-mandatory (optional).

2.1-2.11 The following table illustrates the mechanisms under each option:

REFORM OPTIONS: SUPPORTING REGULATIONS AND CODES	
OPTION 1	OPTION 2
Regulations	Regulations
Mandatory requirements, including:	Applied in concert with basic requirements, including mandatory requirements for specified species, industries and uses. These Regulations would be structured by industry and include:
Permissions and conditions Controlled procedures Critical requirements not covered in COPs	Prescriptive industry-specific requirements Permissions, procedures and exceptions
Mandatory Codes of Practice Direction on measures to meet requirements of the Act. Failure to comply with requirements to be an offence.	No Codes of Practice
Guidelines Best practice guidance with no legal power	Guidelines Best practice guidance with no legal power

- 2.1-2.12 Animal Liberation emphatically condemns the proposal to continue to allow current exemptions under subordinate or auxiliary legislation or instruments. This does not align with the requirements of a sound and consistent law as described in s2.1.1-2. As such, the proposal contravenes the stated intent of the reform process and should be refused.
- 2.1-2.13 We advise caution concerning the adoption of Option 2 insofar as it appears to provide exceptions to activities that should be proscribed or prohibited under the provisions of the proposals. That is, if activities conflict with the spirit or intent of the Bill, they too must be comprehensively reviewed and proscribed if they do not meet or abide by its requirements.
- 2.1-2.14 Despite the concerns cited in s2.1.10, the option to remove total exemptions is accepted. This would also meet the stated aim of ensuring consistency in the new framework. If this option is adopted, we advise that stringent, enforceable and monitored conditions and ongoing audits of any activities is dutifully undertaken to ensure compliance.
- 2.1-2.15 In general, Animal Liberation holds that exemptions significantly impede and conflict with the spirit of Acts. For example, an Act intended to protect animals and prevent cruelty cannot simultaneously recognise sentience and its corresponding requirements and consequently endorse exemptions that effectively condone cruelty. To do so endorses actions condemned by the spirit and intent of the Act and significantly diminish its consistency.
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RECOMMENDATIONS

- R17 **That Option 1 is refused and Option 2 is adopted with consideration to the provisions outlined in s2.1-2.**
- R18 **That comprehensive reviews and assessments are made concerning activities permissible under Option 2 to ensure that these meet the overarching requirements found elsewhere in the Bill, noting that several amendments apply to all animals regardless of status.**

2.3 CODES, STANDARDS AND GUIDELINES

PREMISE

- 2.3.1 The process by which communities adapt and respond to developing knowledge about the capacities of other animals and how they are affected or impacted by human activity can be described as a passage or journey (Mellor and Webster 2014). One avenue this journey has increasingly taken is through the development and adoption of various codes, standards and guidelines.
- 2.3.2 The first Codes of Practice ('COPs') and Regulations concerning farming practices emerged in Australia during the 1970s (White and Dale 2013). Since the 1980s, the welfare of farmed animals has been subject to a series of regulatory mechanisms (White 2007). Those relating to farmed animals were reviewed in 2005 and were recommended to be converted into Australian Welfare Standards and Guidelines (AWSG) (Department of Agriculture, Water and the Environment 2020). The intent of the review is to streamline legislation and improve welfare outcomes in a way "practical for industry" (Animal Health Australia 2020). Other influences in reviews of similar standards is an increasing demand for science-based information from consumers and the development and adoption of international guidelines (Edge and Barnett 2009). Similarly, private markets have increasingly developed standards due to consumer concern for animal welfare (Verbeke 2009; Lundmark et al. 2018).
- 2.3.3 In general, COPs are intended to provide "benchmark standards to provide the minimum acceptable animal welfare" outcomes and are described as containing "definitions of acceptable husbandry practices" or guidance on "what is considered inappropriate or cruel" (Laws 1989; Plowman et al. 2007; Englefield et al. 2019). Many of these have been written and developed in consultation with industry (Emmerson 1993). They cover a broad array of issues, including transport and particular modes of production, though in many instances they are not mandatory (Department of Jobs, Precincts and Regions 2020a). In many cases, their minimum standards fall far lower than the "no-cruelty" standard established in the offence provisions found in primary legislation (White 2007). This has created serious conflicts in its application.
- 2.3.3a For example, farmed animals are "largely exempt from statutory protection" if methods used in their production or treatment abide by COPs (Arbon and Duncalfe 2014). Critics have justifiably concluded that "animal industry practices that might otherwise be considered animal cruelty are exempted from the requirements of the

2.3.3a legislation” and that such exemptions permit the continuance of cruelty by providing defences for offenders (Cole 2013; Arbon and Duncalfe 2014; Kotzmann 2019a). Critics have described these exemptions as regulations masquerading as “the devil in disguise” insofar as they effectively prevent significant welfare improvements from being established (White and Dale 2013). This applied to the gamut of species, including wildlife and introduced animals (Thiriet 2007).

2.3.4 Clauses in a range of State legislation provide such defences (see, for example, section 84 of the Western Australian Animal Welfare Act 2002). Historically, the Australian pig meat industry has been a strong advocate and supporter of COPs. Part of this support is due to the fact that “proof of compliance with a standard” contained within a COP is “a defence under State POCTA Acts” (Plowman et al. 2007). This effectively voids the recognition of sentience and places the ACT’s Animal Welfare Act on par with other State and Territory legislation which does not contain such a recognition.

2.3.5 Critics have argued that animal welfare regulation in Australia is disproportionately influenced by subordinate laws and guidelines, usually crafted by “bodies whose interests are very different from those of animals” (Ellis 2010). This has been described as a feature of animal welfare legislation in Australia (White 2007). Their application and adoption vary considerably, however. As does their effect after they are adopted (White 2007).

PROPOSAL(S)

2.3.6 The Directions Paper contains two (2) options for introducing a mechanism to incorporate national animal welfare Standards as mandatory requirements (Department of Jobs, Precincts and Regions 2020a: 36). These are:

PROPOSED MECHANISM TO INCORPORATE NATIONAL STANDARDS AS REGULATIONS	
OPTION 1	OPTION 2
Adopt all agreed national Standards automatically by referencing them in the new animal welfare Act.	Adopt relevant content from the national Standards into Regulations.

- 2.3.7 If Option 1 is adopted, the forthcoming Bill would provide for the prescription of the Australian Animal Welfare Standards (AAWS) as enforceable requirements under the law. They would take on some force and status as Regulations within a prescribed amount of time in order to transition with their corresponding national endorsement. The Option would also include a mechanism by which the Standards could be varied by exception to “ensure that no Standard that was lower than Victoria’s current standard” is adopted (Department of Jobs, Precincts and Regions 2020a: 36). Compliance and enforcement under Option 1 would be aligned with the AAWS.
- 2.3.8 Option 2 involves using the AAWS as the basis for the development of Regulations under the forthcoming Bill. Such Regulations would “mirror” the AAWS but would also permit reconsideration through State regulatory processes (Department of Jobs, Precincts and Regions 2020a: 36).
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RESPONSE

- 2.3.9 COPs apply to a wide range of species and/or individuals of select species and under an array of circumstances and for a range of purposes. As described in s2.32, some have origins in consumer concern for animal welfare. Others have been developed in response to increased scrutiny of animal welfare outcomes in wildlife management (Riley 2015; Hampton et al. 2016). Some of the animals which the latter apply to belong to the same species as those proposed to be protected under the provision of sentience (see s1.1). Though physical characteristics, behaviour and perhaps genetics may assist in differentiating wild animals from a domesticated individual of the same species, there is no valid reason to believe that the basic biology of a wild individual differs in any substantive way which would legitimate the selective removal of protections in reference to sentience. That the recognition of sentience can apply to animals of the same species yet be effectively removed through reference to a COP should they be considered problematic, inconvenient or unwanted¹⁰, reveals the importance of ensuring that the scope, spirit and application of the recognition of sentience is reasonably, fairly and consistently applied under any forthcoming Bill derived from the present proposals process.
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¹⁰ The Model Codes applicable to 'invasive', 'pest' or 'feral' animals maintains that they are considered 'troublesome', present health risks or are 'a general nuisance' (see Sharp and Saunders, 2012).

- 2.3.10 Codes and Standards have been criticised on a number of important grounds. For example, they have been described as underplaying important factors, such as social change, consumer expectation, international trends and the behavioural needs of animals, while exaggerating economic considerations (White and Dale 2013).
- 2.3.10a For example, the amendments to the equivalent animal welfare framework in the ACT described in s1.1 have been critiqued as narrowly applying to companion animals. This is not the sole criticism, however. The offences created by the amendments to the ACT Act do not apply where the conduct is carried out in accordance with a COP. The interaction between the adoption of animal sentience in the forthcoming draft Bill has potentially serious ramifications in regard to the concurrent application of its recognition and subordinate instruments, particularly COPs, Standards and Guidelines.
- 2.3.11 There is a high level of ambivalence and uncertainty in the Australian community concerning the efficacy of animal welfare standards (Futureye 2019). This ambivalence is addressed in s2.1 above as per the proposals concerning consistency and clarity. We hold that the existence of subordinate instruments whose contents provide defences for actions that would otherwise constitute cruelty is a significant cause of ambivalence and a serious inconsistency in the framework. Critics have condemned this as an example of “legal sleight of hand” in which compliance is “used as a defence to otherwise cruel practices” (White and Dale 2013). As such, we urge a comprehensive review and assessment of the alignment between the proposals to adopt or tailor the AAWS in the forthcoming Bill.
- 2.3.12 Animal Liberation would only endorse this proposal where an equal or higher level of animal welfare or protection could be achieved and maintained. We acknowledge, however, that in the event that standards do not regress or degenerate to unacceptable conditions, greater levels of consistency may be achieved via a national approach.

RECOMMENDATIONS

- R19 **That all animal welfare and protection legislation, including provisions contained in any subordinate instruments, such as COPs, Standards or Guidelines, must be mandatory and clear.**

They must be framed in mandatory rather than optional language (i.e., “must” and “must not” rather than “should” or “should not”).

R20

That comprehensive reviews and assessments are made concerning activities permissible under Option 2 to ensure that these meet the overarching requirements found elsewhere in the Bill, noting that several amendments apply to all animals regardless of status.

2.4 THE ROLE OF CO-REGULATION

PREMISE

2.4.1 The responsibility for regulating animal welfare has historically been held by States and Territories (White 2007). However, many activities which involve animals are now subject to a range of non-governmental or private regulations. Some of these are described above in s2.3.2. They have been described as an example of the “decentring” of regulation, wherein government do not have sole regulatory responsibility (Black 2001). Others have cited their appearance and proliferation as examples of political modernisation, wherein a shift from the government towards governance has allowed the role of regulation to be filled by private standards (Maciel and Bock 2013).

2.4.2 Some have concluded that “regulation is no longer regarded as the exclusive domain of the state and governments” (Hutter 2006). Despite being often overlooked, the regulatory role of non-governmental actors is increasingly accepted on a global level (McNaughton and Lockie 2017). In some cases, the influence of non-government actors has led to amendments to international animal protection policy (Challender and MacMillan 2019).

“The effectiveness of the institutional processes underpinning codified animal welfare standards as a means of protecting the interests of animals can be challenged on a number of grounds. Animal welfare standards are meant to incorporate many considerations in their formulation. It appears though that some factors that suggest the need for improved standards, such as societal expectations, international trends and the behavioural needs of animals, are underplayed. By contrast, other considerations that militate against significant improvements in standards, such as economic considerations, are heavily overplayed” - White and Dale (2013)

2.4.3 In some cases, private standard-setting represents growth in regulation (Radford 2001). They may play an important role in providing standards that others voluntarily comply with (Breslin and Nesadurai 2017). In their origins and contents, they are influenced by the public and consumer-led welfare economics (Degeling and Johnson 2015; Phillips and Petherick 2015). Some have ascribed this to the rise in accessibility of awareness stemming from the concurrent growth and prevalence of digital technology (Grabosky 2012). The increase in private regulation and governance via non-governmental standards is a global phenomenon in animal welfare (Vogeler 2019).

2.4.4 Despite the above and regardless of who develops or adopts a standard, it has no innate legal force. Its legal power is acquired if and when legislation or private contract mandates its compliance (McNaughton and Lockie 2017). The latter is associated with market forces. For example, a producer may be obliged to meet a standard if they intend to retail their products in a particular market. This is the case if a producer wishes to trade with one of Australia’s large supermarket chains. For instance, an animal welfare policy can require its standards are met for products to be sold in their stores (Coles Group 2020; Woolworths Group 2020). Each of the large supermarkets (Coles and Woolworths) have animal welfare policies that require products to meet their requirements domestically and internationally. Many of these exceed those contained in the current reform process¹¹. For example, the policy established by the Woolworths Group stipulates that all branded pig-meat products are sow-stall free (Woolworths Group 2020). It is currently legal under existing State animal welfare standards to confine sows in such stalls (Department of Primary Industries 2012; Agriculture Victoria 2020c).

2.4.5 The Directions Paper acknowledges that some non-governmental standards exceed those contained in the law and that these can be traced to market trends and consumer demands. It notes that the schemes these are associated with are not recognised under POCTA “even if they demonstrate best practice in animal welfare” (Department of Jobs, Precincts and Regions 2020a: 37). An example of such a scheme is the RSPCA Approved Farming Scheme. This scheme was established over twenty (20) years ago and contains marginal improvements in welfare-based provisions when compared to those permissible under POCTA (RSPCA Australia n.d.; RSPCA Australia 2016).

PROPOSAL(S)

2.4.6 The Directions Paper acknowledges that some non-governmental standards exceed those contained in law and that these can be traced to market trends and consumer demands. It notes that the schemes these are associated with are not recognised under POCTA “even if they demonstrate best practice in animal welfare” (Department of Jobs, Precincts and Regions 2020a: 37).

¹¹ The Coles Group Animal Welfare Policy, for example, stipulates that the treatment of animals in its global supply chain must be in accordance with the Five Freedoms (Coles Group 2020).

- 2.4.7 The Directions Paper contains a proposal wherein such non-governmental regulatory arrangement as those cited above are adopted into the new legislative framework “where they meet or exceed the minimum legislated standards” (Department of Jobs, Precincts and Regions 2020a: 37). The paper identifies this proposal as an example of “co- regulation” between industry and enforcement agencies.
- 2.4.8 While the Directions Paper maintains that co-regulation has not previously been widely adopted in animal welfare contexts, it notes that “the rise of market-driven animal welfare requirements means that co-regulatory arrangements can help maintain the flexibility and efficiency” of the overall framework. The Paper also states that such an arrangement can “help reduce the regulatory burden or ‘cut red tape’” insofar as it allows a person or people to demonstrate that they are meeting their requirements through compliance with a scheme not presently recognised under POCTA (Department of Jobs, Precincts and Regions 2020a: 37).
- 2.4.9 Though it would not alter or replace the enforcement provisions or powers of authorised agencies or officers under the forthcoming framework, should this arrangement be adopted the framework would permit a person or people to undertake restricted procedures (see s1.4). Those same agencies and their officers would remain responsible for enforcing compliance in the event of breaches to its provisions (Department of Jobs, Precincts and Regions 2020a: 37).
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RESPONSE

- 2.4.10 Private standard-setting has recently taken on significance as a regulatory tool and mechanism (McNaughton and Lockie 2017). That private or non-governmental standards exist which exceed the requirements under law indicate the need for a comprehensive review of relevant provisions, such as those previously discussed in this submission.
- 2.4.11 Governance and enforcement of animal welfare legislation in Australia has a history of reliance on non-state actors. For example, the RSPCA has been relied upon heavily by the state in the enforcement of State legislation. It has done so almost since its establishment in 1822 (Radford 2001; White 2007).

2.4.12 The proposal to adopt non-government standards which exceed those in State law is a strong indication that there is recognition that existing standards are insufficient, outdated and require substantial improvement. Animal Liberation promotes the establishment of stricter and more encompassing standards. However, we maintain that these standards are themselves out of sync or misaligned with the spirit of the proposed reforms. It is not sufficient to recognise the capacity of animals to experience positive and negative emotional states whilst continuing to diminish or eliminate their ability to naturally do so in the service of economics.

RECOMMENDATIONS

- R21 **That it is recognised that the conditions of preexisting non-government and government crafted standards are incompatible with the spirit of the proposed reforms insofar as they diminish or eliminate an animals capacity to naturally experience the emotions discussed in s1.1 of this submission.**
- R22 **That it is recognised that economics should not dictate the crafting and contents of law.**

2.4 THE ROLE OF SCIENCE

PREMISE

- 2.5.1 Scientific assessments of animal welfare contribute to the establishment of ethical, legal and political understanding of the ways in which we treat other animals (Beausoleil 2018). Science is cited as a trigger for the proposed inclusion of sentience in the forthcoming draft Bill (see s1.1). This is one cited example of the manner with which animal welfare science has developed since the creation and passing of POCTA in 1986 (Department of Jobs, Precincts and Regions 2020a: 8). The following section will outline the components we believe are essential inclusions in the forthcoming Act in the service of providing scientific grounding for its provisions. A key consideration in this context is the measurement and evaluation of animal welfare and its implications under law. This is because pain, its detection and prevention or amelioration are vital components of animal welfare and care (Anil et al. 2010).
- 2.5.2 Historically, the method commonly adopted when crafting animal welfare policy is known as the ‘Five Freedoms’ (Mellor 2016). Though contemporary approaches are increasingly highlighting the promotion of positive states rather than merely the absence of negative ones, current research suggests that there is a need to update this strategy (Mellor and Beausoleil 2015; Mellor 2016). These equally apply to animals across categories, including farmed animals and those targeted in lethal control programs or used in scientific or medical experimentation (Beausoleil and Mellor 2014; Mellor et al. 2020). The latter is particularly important when considering Option 3 of Proposal 2.5. This is because auxiliary Regulations and COPs often provide important advice concerning the treatment of animals and have historically offered offenders opportunities of defence if their actions adhere to provisions not otherwise contained within formal Acts (Cole 2013; Arbon and Duncalfe 2014; Kotzmann 2019a).

PROPOSAL(S)

- 2.5.3 Broadly, the role of science applies to many proposals and their guiding motivations. It is referred to in the introductory paragraphs of the Directions Paper in reference to the complexity and inflexibility of current legislation. The Department maintain that this “limits the ability to easily adapt the law in response to developments in

- 2.5.3 animal science” (Department of Jobs, Precincts and Regions 2020a: 8).
- 2.5.4 Science is referred to elsewhere in the Directions Paper. For example, Theme 2 concerns the crafting of “a simplified and flexible legislative framework” (Department of Jobs, Precincts and Regions 2020b: 3). The Directions Paper explains that this would “provide greater flexibility to enable the law to be more easily adapted in response to developments in animal science or to new industry practices and technologies or changing community expectations” (Department of Jobs, Precincts and Regions 2020a: 8). Similarly, science is referred to in Proposal 2.2 as an example of specific requirements governing permissible activities (Department of Jobs, Precincts and Regions 2020a: 12). The Directions Paper notes that “these requirements can take considerable time [to create] and be difficult to update in response to development in animal science, new industry practices and technologies”. The section also maintains that “keeping the numerous Regulations and Codes of Practice” can be “challenging”. As a result, many of these have “not been reviewed for a considerable time” (Department of Jobs, Precincts and Regions 2020a: 32).
- 2.5.5 The value of science is also cited under various other proposals. For example, Proposal 1.2 concerns duty of care requirements. The Directions Paper notes that while each jurisdiction “frames their ‘duty of care’ requirements in different ways”, each “generally require people to provide the basic needs of an animal as defined by animal welfare science” (emphasis added) (Department of Jobs, Precincts and Regions 2020a: 19). The application of this scientific evidence applies to a wide range of circumstances. The requirements may relate to the provision of basic resources, such as food, water, veterinary care, appropriate shelter or housing, for example. Each of these is based on animal science (Department of Jobs, Precincts and Regions 2020a).
- 2.5.6 The Directions Paper includes three (3) options for formalising a role for scientific knowledge and expert opinion in the decision-making processes of the new framework. These are:

PROPOSED OPTIONS FOR FORMALISING A ROLE FOR SCIENCE AND EXPERTISE UNDER THE ACT		
OPTION 1	OPTION 2	OPTION 3
Formalise a role for an expert advisory committee by reference.	Include guidance on how science and expertise should be used to inform decisions.	Include guidance on how science and expertise should be considered in the development of Regulations and COPs

RESPONSE

- 2.5.7 Many of our responses to issues and questions of animal welfare science have been provided in the previous sections. Generally, however, we acknowledge and agree that evidenced-based science must play a key role in informing a new animal welfare and animal protection framework. Historically, the scientific study of animals has played a conflicted role with many from within the scientific community using the growing knowledge of animals to manipulate their lives more efficiently in the service of various industries, as well as achieving economic and political outcomes.
- 2.5.8 Input from scientists and those with a level of expertise is vital. However, this input must be objective, independent and free from any conflicts of interest. Such input must also be meaningful with members appointed on the merit of their expertise and standing through a legislated platform affording them the power to implement change, rather than merely “advise”. These considerations must apply to any of the options cited above if adopted.

RECOMMENDATIONS

- R23 **That current animal welfare science is recognised as an important source of data and information which must guide and inform our treatment of animals. This must allow for and expect ongoing development and be provided for in the forthcoming Bill’s framework.**
- R24 **That the role of science and expertise is recognised as vital under the proviso that it is objective, independent and free from conflict of interest.**

3 GENERAL RECOMMENDATIONS

- 3.1 In addition to the recommendations provided as per the sections above, we urge the consideration of the following:
- R25 That the name of the draft bill be amended to the Animal Protection and Welfare Act rather than the Animal Welfare Act, to better encompass and clearly articulate the statutory objectives, purpose and aims of the Act, science, contemporary and wide-spread public expectations regarding animal welfare, sentience, and how animal welfare and protection is regulated and enforced.
- R26 The Act must be non-discriminatory towards species types, fair and just, and based on science, with a clearly defined priority to protect the “welfare of animals”.
- R27 The proposed Act must provide for equal application and focus with both pro-active and re-active responses, monitoring, compliance and enforcement of animal cruelty and animal protection matters.
- R28 That the Five Freedoms, Cambridge Declaration on Consciousness, the Five Domains, the Treaty of Lisbon, and Personhood should all inform the development of the proposed Animal Welfare Act to incorporate the physical and mental (psychological) needs of animals and their individual and unique sentience.
- R29 That the forthcoming Bill clearly recognise, acknowledge and articulate that sentience is a core component of the concept of welfare - that animals are sentient and therefore have “inherent value”, not based on their commodification, but on their existence as unique individuals. Science, consistency and impartiality oblige us to acknowledge them as morally relevant. A new Act must include recognition and clearly defined articulation of sentience in law for all species founded on evidenced based science and community expectations, which translate into meaningful and enforceable animal welfare and animal protection legislation.
- R30 That the definition of “animal” be broadened to include humans. Given the global acceptance of sentience in other-than-human animals, Animal Liberation believes that the definition must include rather than exclude humans. This will assist in ensuring the definition is consistent with available science and public opinion.

- R31 That reliable and evidence-based scientific indicators of physical and mental suffering and pain are developed. All species in their own right must be afforded equal and non-compromised protection of their welfare under the law in a pro-active manner under an enforceable 'duty of care'.
- R32 That the forthcoming Bill clearly define and articulate animal suffering and cruelty, and legal animal suffering and cruelty. Recognition of physical and mental cruelty and suffering in law for all species founded on sentience. The definition of cruelty must be clear, concise, and non-negotiable. Currently, it is illegal to commit an act of cruelty upon an animal, however, it is open to interpretation insofar as it refers to any act that "unreasonably, unnecessarily, or unjustifiably" inflicts pain. It does not explicitly define what "unnecessary" means. Thus, it is interpretive.
- R33 That maximum not minimum standards of care are introduced.
- R34 That all exemptions and exceptions are removed, or as a minimum, must include mandatory recovery periods and pain relief before and after husbandry procedures.
- R35 That an increased police role in law enforcement against suspected or known perpetrators of animal cruelty is introduced.
- R36 That the burden of proof be lowered to a reasonable standard where any animal has suffered or is at risk of suffering or experiencing physical or mental pain.
- R37 That a comprehensive review of other progressive Australian and global legislation, including subordinate instruments, is conducted to inform the forthcoming Bill.
- R38 That the Victorian Government fully consider the findings and recommendations of:
- A the Sentencing Advisory Council Report (2008-17)
 - B Commodity or Sentient Being? Australia's Shifting Mindset on Farm Animal Welfare (Commonwealth Government commissioned report)
 - C the Victorian Government's Inquiry into the Impacts of Animal Rights Activism on Victorian Agriculture

D the Victorian Government's Inquiry into RSPCA
Victoria

R39 **That a principle similar to the “precautionary principle” used in environmental planning decision-making is developed for application in all animal welfare and protection considerations with planning matters.**

R40 **That animal welfare and protection considerations and measures are incorporated into all Local Government Local Environment Plans and Strategic Planning strategies and documents to ensure animal welfare and protection is directly linked to the proposed Bill.**

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APPENDICES

APPENDIX 1

LEGISLATION GOVERNING ANIMAL WELFARE IN AUSTRALIA ADAPTED FROM RSPCA AUSTRALIA 2020

STATE	PRIMARY LEGISLATION	LAST REVIEW
VIC	<i>Prevention of Cruelty to Animals Act 1986</i>	2020
NSW	<i>Prevention of Cruelty to Animals Act 1979</i>	2020 ¹
QLD	<i>Animal Care and Protection Act 2001</i>	2021 ²
SA	<i>Animal Welfare Act 1995</i>	2020 ³
WA	<i>Animal Welfare Act 2002</i>	2019 ⁴
TAS	<i>Animal Welfare Act 1993</i>	N/A
ACT	<i>Animal Welfare Act 1992</i>	9
NT	<i>Animal Welfare Act</i>	2014 ⁵

¹ The NSW Department of Primary Industries (DPI) conducted a review in 2020

² The QLD Department of Agriculture and Fisheries has recently announced a review in early 2021

³ The South Australian Government produced amendments to the Act in June 2020 (see *Statutes Amendment (Animal Welfare Reforms) Bill 2020*)

⁴ The Department of Primary Industries and Regional Development conducted a review in 2019

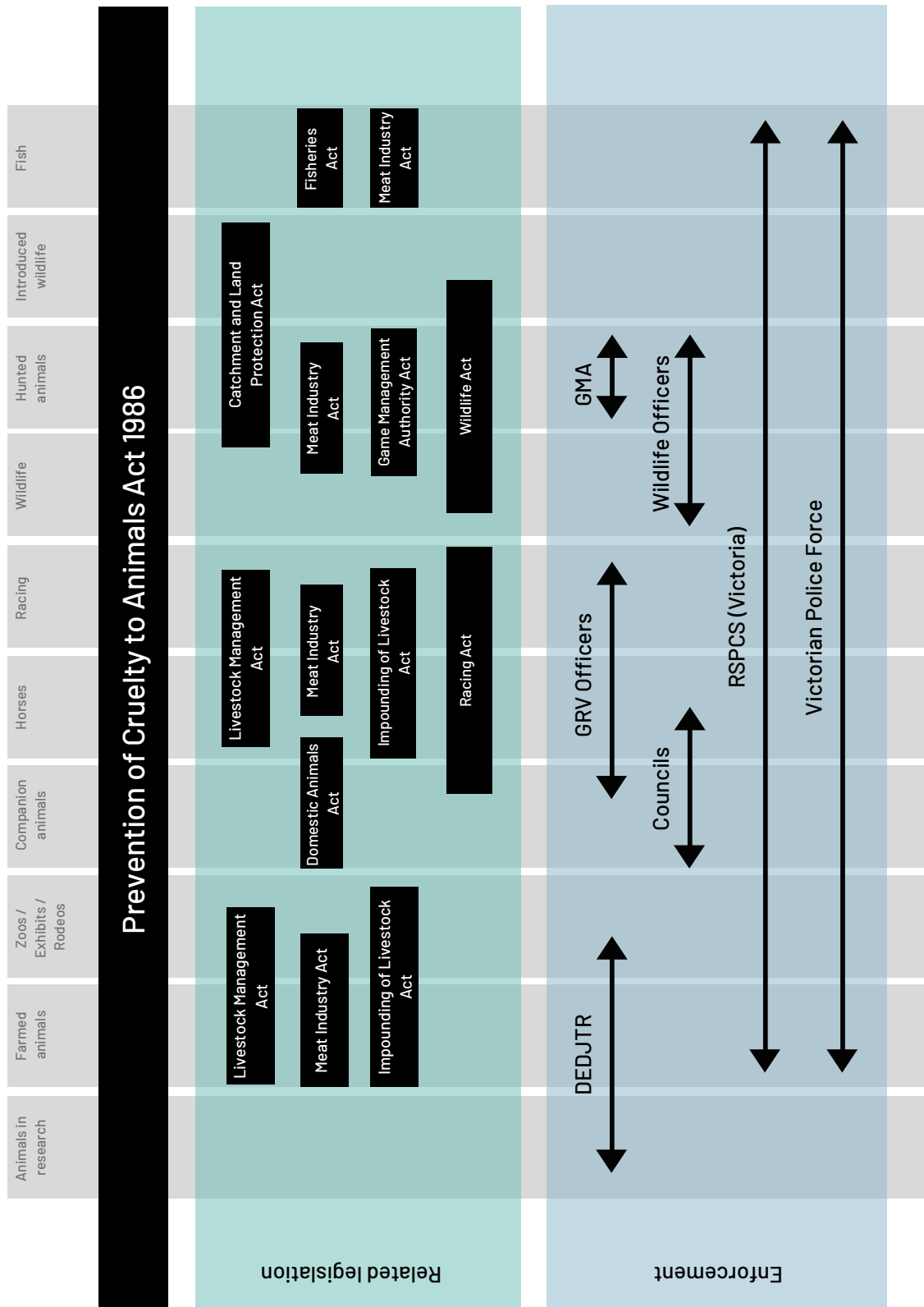
⁵ The Department of Primary Industries, Water and Environment conducted a review in 2014

#	THEME	POLICY TOPIC
1	<p>SAFEGUARDING ANIMAL WELFARE</p>	<p>1.1 Animal Sentience 1.2 Minimum Standards 1.3 Prohibited Acts 1.4 Controlled Procedures</p>
2	<p>SIMPLE, FLEXIBLE FRAMEWORK</p>	<p>2.1 Consistency 2.2 Clarity 2.3 Codes, Standards and Guidelines 2.4 Role of Co-Regulation 2.5 Role of Science</p>
3	<p>COMPLIANCE & ENFORCEMENT MODEL</p>	<p>3.1 Monitoring Compliance 3.2 Permissions and Restrictions 3.3 Managing Seized Animals</p>

APPENDIX 5

SCHMATIC OF CURRENT ROLES AND RESPONSIBILITIES UNDER POCTA

ADAPTED AND UPDATED FROM THE COMRIE REPORT 2016



APPENDIX 2

2016 STATE RSPCA INSPECTORATE STATISTICS COMRIE REPORT 2016

STATE	INSPECTORS	CRUELTY REPORTS	PROSECUTIONS
VIC	20	10,740	69
NSW	30	15,555	89
QLD	24	18,499	17
SA	8	4,953	60
WA	15	16,506	28
TAS	6	3,017	31
ACT	3	2,235	9

APPENDIX 3

2020 STATE RSPCA PROSECUTION STATISTICS* MORTON ET AL. 2020

STATE	INSPECTORS	CRUELTY REPORTS	PROSECUTIONS	RATE (%)
VIC	26	10,642	32	1.1
NSW	32	15,673	77	0.5
QLD	24	17,810	154	0.9
WA	15	6,417	10	0.2
SA	9	4,244	32	0.8
TAS	4	2,188	8	0.4
ACT	3	988	20	2.0

*The Northern Territory is not included as the RSPCA has no role in enforcement in this jurisdiction

APPENDIX 4

NATIONAL RSPCA REPORTS AND PROSECUTIONS STATISTICS COMRIE REPORT 2016

YEAR	2012-13	2013-14	2014-15
REPORTS	49,861	58,591	60,809
PROSECUTIONS	358	236	274

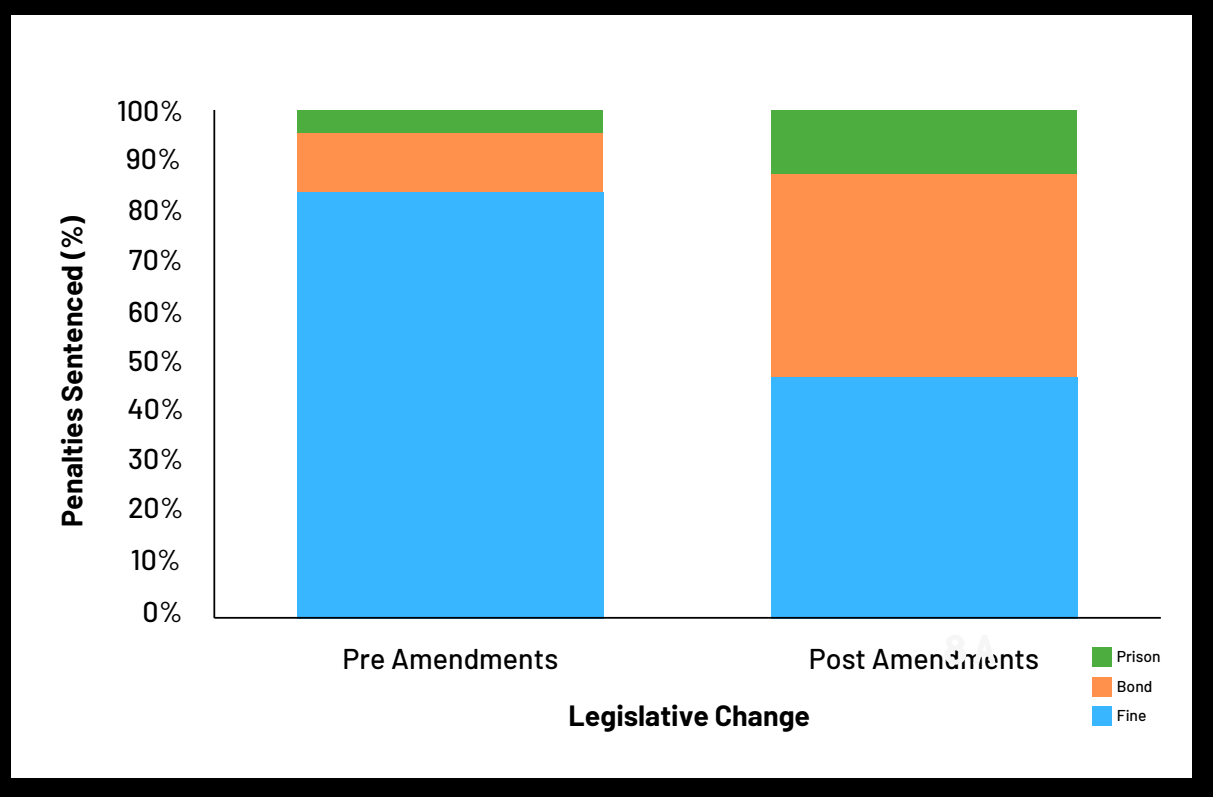
APPENDIX 7

RECOMMENDATIONS MADE BY THE INDEPENDENT REVIEW OF RSPCA VIC COMRIE REPORT 2016

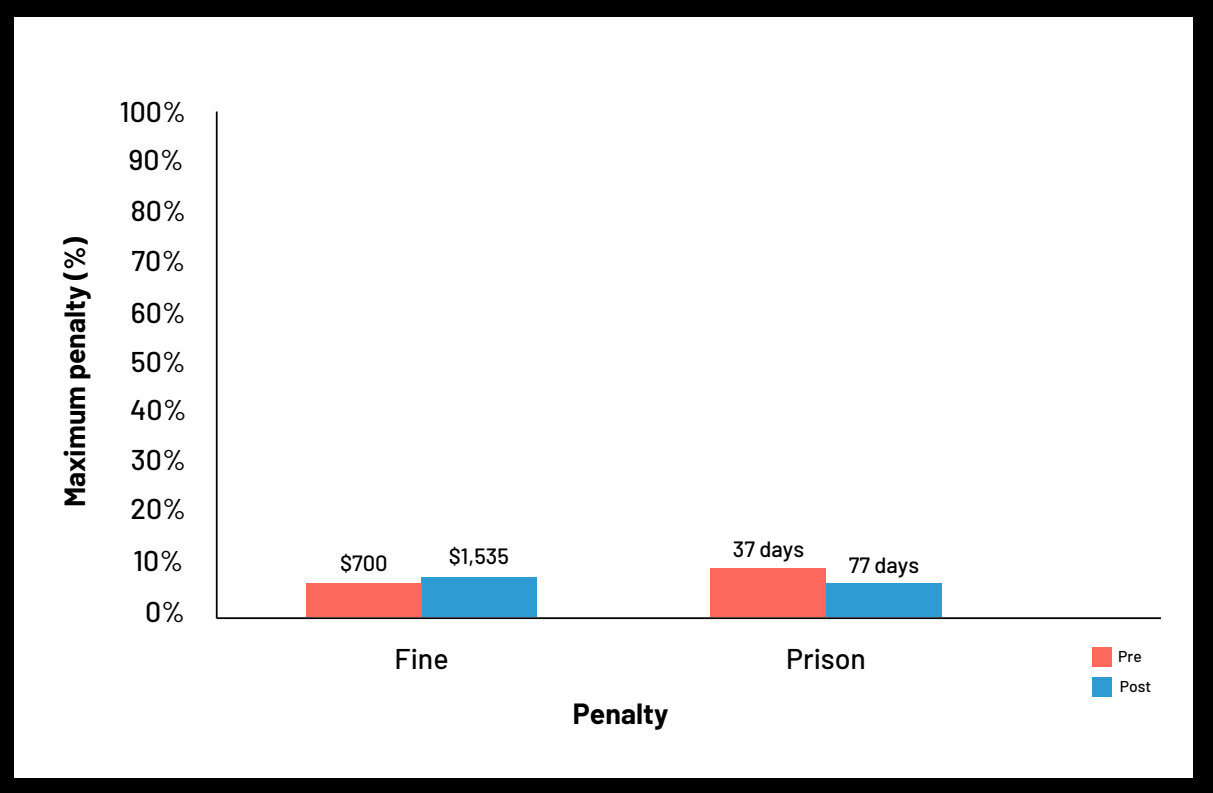
#	RECOMMENDATION	STATUS*
1	Reassess budget, demand for inspectorate services and develop budget submission for increase in recurrent allocation of funds	
2	Take all necessary steps to improve the safety of the inspectorate	
3	Implement measures to retain valuable staff, such as incremental salary increases and flexible work arrangements	
4	Consider efficient recruitment options	
5	Undertake training needs analysis of inspectorate	
6	Remove peripheral and corporate administrative functions of inspectorate to enable focus on operational responsibilities	
7	Strengthen supervisory responsibility and accountability by creating Team Leader and Senior Inspector roles	
8	Provide necessary structure, support, training and development to ensure strong leadership and management obligations are met	
9	Introduce new structure and operating model in accordance with report	
10	Ensure radio monitoring is a shared responsibility	
11	Review existing MOUs, SOPs and protocols to ensure arrangements reflect proposed operating environment of the inspectorate	
12	Take action necessary to provide relevant policies, procedures and templates online	
13	Review accommodation arrangements	
14	Undertake equipment needs analysis to ensure duties can be undertaken safely and efficiently	
15	Utilise appropriate volunteers to assist with reports which are not responsibility of the inspectorate	
16	Engage DEDJTR to identify strategies to reduce workload, engage with local government to ensure clear understanding of focus on animal cruelty and develop communications strategy	
17	Ensure prosecutors under POCTA pursue payment of court costs to RSPCA	
18	Pursue authority to issue infringement notices for lower level offences and failing to meet Notices to Comply under POCTA	
19	Engage State Government to seek amendments to POCTA concerning seized animals	
20	Explore with DEDJTR the viability of horse licensing	
21	Discontinue role of public activist campaigning against existing State laws	
22	Ensure senior executives deliver recommendations	

*As per advice given by the RSPCA

8.1 PENALTIES FOR ANIMAL CRUELTY OFFENCES PRE- AND POST-LEGISLATIVE CHANGE



8.2 FINANCIAL AND PUNITIVE PENALTIES FOR ANIMAL CRUELTY OFFENCES PRE- AND POST-LEGISLATIVE CHANGE





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