



Department of Jobs, Precincts and Regions
1 Spring Street
Melbourne Victoria 3000

By email: legislationreform@agriculture.vic.gov.au

Dear Sir/Madam

Submission on the *Plan for Victoria's new animal care and protection laws*

Thank you for the opportunity to provide submissions about the *Plan for Victoria's new animal care and protection laws* ("the Plan") prepared by the Victorian Department of Jobs, Precincts and Regions.¹

About the Animal Defenders Office

The Animal Defenders Office ("ADO") is a nationally accredited not-for-profit community legal centre that specialises in animal law. The ADO is run by volunteer professionals and students. The ADO produces information to raise community awareness about animal protection issues and works to advance animal interests through law reform.

The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres in all jurisdictions.

Further information about the ADO can be found at www.ado.org.au.

The ADO wishes to provide feedback on the following parts of the Plan.

1. Recognising sentience

The ADO supports the proposal to recognise sentience in Victoria's new animal protection laws ("the new laws").

The ADO recommends that the recognition of sentience in the new laws be based on the recent Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022 (NSW) ("the NSW Bill").² The NSW Bill was introduced into the NSW Parliament on 10 August 2022. It proposes to amend the objects clause in the current NSW animal welfare law³ to recognise sentience in the following way:

3 Object of Act

(1) The object of this Act is to recognise the following—

- (a) the sentience of animals and their ability to subjectively feel and perceive the world around them,
- (b) that animals have intrinsic value and deserve to be treated with compassion and to have a quality of life that reflects their intrinsic value,

¹ Available at: <https://engage.vic.gov.au/new-animal-welfare-act-victoria>.

² Available at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3946>.

³ *Prevention of Cruelty to Animals Act 1979* (NSW) ("POCTAA NSW"). Currently POCTAA NSW does not explicitly recognise animal sentience.

(c) that people have a duty of care to ensure the physical and mental welfare of an animal in their charge and to provide opportunities for the animal to feel or experience positive states of comfort, interest or pleasure.

Given that the new laws will not change animals' property status⁴, the ADO recommends that the new laws are modelled on the NSW Bill by recognising animals' inherent value and including a duty of care. The duty of care would introduce a responsibility for an animal's *positive* welfare, rather than merely the avoidance of negative states (although this is of course important). This would ensure that recognising sentience is more than an empty gesture. It would ensure that recognising sentience in the new laws would lead to meaningful change in how animals used by humans are protected. This would align with the next generation of sentience laws in common law jurisdictions. For example, the UK's new sentience law not only explicitly acknowledges sentience but also establishes an Animal Sentience Committee to examine government policies in order to determine whether they have an adverse effect on animal welfare.⁵

The ADO submits that the new laws in Victoria should not stop at recognising sentience, but should create a responsibility to facilitate a positive life for animals in the care of humans.

2. Animals covered by the new laws

The ADO supports the inclusion of the new animal types as proposed in the Plan.⁶ However, the ADO supports a straightforward definition of animals that includes the types of animals specified in the Plan but without complicated distinctions relating to age or life stage.⁷ This would avoid the burden on enforcement officers or prosecutors of having to prove what is an 'adult' or whether a specified animal is 'capable of self-feeding' or 'above the normal midpoint of gestation [etc]', in the unlikely event a person is prosecuted for harming one of the specified animal types (eg harm to an 'adult' crayfish). This would achieve the objective of keeping the new laws (which are criminal laws) clear and relatively uncomplicated while still allowing the issue of sentience to be raised by an offender as part of their defence.

The ADO supports allowing additional types of animals to be prescribed in regulations.⁸

3. Legislative framework

The ADO looks forward to assessing the proposed 'high-level and principles-based' approach proposed for the new laws when they are released.⁹

The ADO supports the proposal to replace codes of practice with regulations (ie delegated legislation). This would ensure the legal status of the requirements included in the regulations would be clear. This should assist in the enforcement of those requirements.

⁴ The Plan p12.

⁵ *Animal Welfare (Sentience) Act 2022* (UK), available at: <https://www.legislation.gov.uk/ukpga/2022/22/contents>.

⁶ The Plan p15.

⁷ The Plan p15.

⁸ The Plan p16.

⁹ The Plan p18.

The Plan states that:

Like the current POCTA Codes of Practice, the regulations would provide for exceptions to the offences in the Act, including the care and protection offences (that is, if you do something in line with the Act and the details in the regulations, you can't be prosecuted for cruelty).¹⁰

The ADO does not support subordinate legislation prescribing practices that are inconsistent with the objects and duties that would be enshrined in the new laws. The ADO therefore recommends that the regulation-making power under the new laws includes a condition that subordinate legislation cannot prescribe practices that are inconsistent with the objects and duties under the new laws, including the recognition of animal sentience.

The ADO also recommends that the new laws require that the code-requirements incorporated in regulations are based on 'good practice and scientific knowledge', as recently proposed in Queensland's amendments to its animal welfare law.¹¹

4. Decision-making principles

The Plan proposes to include a set of principles in the new laws that would need to be applied in the making of government decisions that may affect animals.¹² While the ADO supports this proposal in general, it is noted that the principles deal with only negative states of harm, pain and distress. The ADO submits that the decision-making principles should also acknowledge animals' positive states of mental and physical wellbeing and require these to be considered by decision-makers.

5. Application of the new laws

The ADO does not support exempting activities that harm animals *unnecessarily* from the application of the new laws. The ADO submits that by contemporary standards, activities or practices that harm animals unnecessarily may include:

- Hunting of any animal but, in particular, native animals including wild ducks and macropods.
- Destroying any animal by poisoning (eg so-called 'pest animals').
- Battery egg cages.
- Sow stalls and farrowing crates.
- Whipping horses used for racing and horse racing in general.
- Greyhound racing.
- Rodeos.
- Fishing.
- Mulesing (including with pain relief).
- Dehorning cattle.

The ADO submits that the new laws should apply to these activities. This would allow the courts to determine whether the activities are unnecessary or unreasonable by contemporary community standards, in the event that a person or corporation were to be prosecuted for carrying out one of these harmful activities.

¹⁰ The Plan p18.

¹¹ Animal Care and Protection Amendment Bill 2022 (QLD), clause 4 'Amendment of s 13 (Making codes of practice)', available at: <https://documents.parliament.qld.gov.au/bills/2022/3094/Animal-Care-and-Protection-Amendment-Bill-2022-7252.pdf>.

¹² The Plan p24.

6. Care

The ADO supports the Plan's proposal to include in the new laws enforceable 'care requirements' for animals under a person's care and control.¹³ The care requirements would be those 'reasonably necessary for the health and wellbeing of an animal'.

The ADO submits that to achieve this objective the requirements must include obligations to provide for positive welfare states, such as enjoyment, rather than merely limiting negative states.

7. Cruelty

The ADO supports the proposal outlined in the Plan to introduce three escalating cruelty offences that would apply to any person or body corporate.¹⁴ The ADO's support is based on the premise that the current strict liability cruelty offences that do not require proof of a mental state remain in the new laws.

In particular, the ADO supports the proposal to impose heavy penalties on conduct that inflicts harm on an animal and is done intentionally or recklessly and in a way that normalises, provokes or perpetuates further cruelty (eg filming the conduct for distribution on social media).¹⁵

The ADO also supports the proposal to describe specific actions without the need to prove that the conduct caused unreasonable harm, pain or distress. This is a sensible and proportionate response to the problem of proving pain in non-human animals and should be applied on a precautionary basis—that is, where it is likely that an action would cause an animal harm, that action should be included even if scientific understandings of the effect of the actions on sentient animals are still evolving.

8. Controlled conduct

The ADO supports the general concept of controlled conduct in relation to activities involving animals and regards the procedures proposed to be prohibited as a starting point.¹⁶ The ADO submits that the procedures prohibited under the new laws should be constantly evaluated and expanded as community values change. This could be achieved by allowing procedures to be prescribed in regulations.

The ADO submits that the provisions in the new laws controlling harmful conduct or devices should not be undermined by exemptions in the regulations. This aspect of the new laws will need to be closely scrutinised when the draft laws are released.

9. Framework for specified classes of conduct

Given the harmful activities proposed to be covered by this part of the new laws, the ADO submits that this proposal will not be able to be assessed until the draft laws are released. It is a general concern that the new regulations would allow activities that are known to cause animals pain, harm and distress to continue. This is a particular concern if the regulations would allow activities that would otherwise infringe the general protections and care requirements under the principal legislation.

¹³ The Plan p34.

¹⁴ The Plan p38.

¹⁵ The Plan p44.

¹⁶ The Plan p47.

10. Scientific procedures

The ADO looks forward to the release of the draft new laws to assess the proposed reforms regarding scientific procedures and in particular, the balance struck between protecting animals while allowing animal experimentation to continue.¹⁷

The ADO supports standardising the definition of ‘animal’ in the new laws so that the same definition applies to the regulation of animal research.

The ADO submits that hatching projects should be prohibited under the new animal research regulatory framework. Hatching projects are acknowledged around the world as having serious animal welfare concerns.¹⁸ If hatching projects are not proscribed under the animal research regulatory framework, then they should at least be subject to standard regulatory requirements under the new laws dealing with uses of animals in research and teaching (that is, they should not be exempted from these requirements).

11. Authorised Officers

The ADO supports creating a single class of Authorised Officer.¹⁹ This would go some way to streamlining and enhancing the enforcement framework under the new laws.

However the ADO recommends that consideration be given to creating and funding an independent authority responsible for compliance and enforcement under the new laws. An option would be establishing and funding a specialist unit within the Victorian police force to investigate and prosecute animal cruelty offences.²⁰

This would avoid the inherent conflict of interest in having government departments responsible for promoting animal industries also responsible for animal welfare.

12. Authorised Officer powers

The ADO agrees that enforcement powers under current Victorian animal protection laws need to be reviewed and updated. The current framework is complex and difficult to decipher.

The ADO does not support a blanket requirement for ‘reasonable notice of entry’,²¹ especially in commercial contexts. Unannounced inspections by Authorised Officers of animal-use enterprises must be not only possible, but also facilitated. This would go some way to counter the unacceptably low number of routine inspections of commercial premises involving animals carried out in Victoria by enforcement officers under current animal welfare laws.²²

¹⁷ The Plan p57.

¹⁸ See RSPCA Australia: <https://kb.rspca.org.au/knowledge-base/what-are-the-animal-welfare-issues-with-chick-hatching-in-schools/>; Animal Kind (UK): <http://animalkind.org.uk/wp-content/uploads/2019/10/AA-Hatching-Worksheet.pdf>; United Poultry Concerns (USA): <https://www.upc-online.org/hatching/>.

¹⁹ The Plan p62.

²⁰ This was recommended by a NSW Parliamentary Select Committee in its report on animal cruelty laws in NSW: New South Wales. Parliament. Legislative Council. *Select Committee on Animal Cruelty Laws in New South Wales. Report; no. 1*, June 2020, recommendation 14.

²¹ The Plan p66.

²² RSPCA Australia, *National Statistics 2020-21*, available at <https://www.rspca.org.au/what-we-do/our-role-caring-animals/annual-statistics>. According to the report, 28 inspections were carried out by RSPCA Victoria in 2020-21 (Table 5).

13. Seizure and disposal of animals

The ADO recommends that the timeframe for holding seized animals during investigations under the new laws needs to be clearly defined. Currently there is no set limit which causes incredible stress to animal carers whose animals are seized. Officers should be required to carry out an investigation within a specified time. This would provide certainty for both enforcement officers and animal keepers.

The ADO does not support allowing any entity other than a court to order that a seized animal be 'disposed of'. Disposing of a person's animal is an incredibly serious decision affecting the animal and their carer and should be a power exercised after appropriate judicial consideration.

The ADO does not support any limitation on the availability of merits review for animal keepers whose animals have been seized, especially if decisions can be made to 'dispose of' or destroy the animals.²³ The ADO submits that limiting availability of merits review is unreasonable and unjustified. A proportionate response would be to streamline the government processes that take the time, rather remove fundamental rights to challenge government decision-making. Merits review gives keepers and carers a crucial and accessible means to test the decision that has been made about their animal. To propose that keepers would have access to judicial review is unrealistic.²⁴ Judicial review processes are expensive, time consuming and stressful. Judicial review is simply not a realistic or viable option for most members of the community.

14. Enforcement toolkit

The ADO supports enhancements to the range of enforcement mechanisms available to authorised officers. Relying on prosecutions is a cumbersome and inappropriate enforcement measure in many instances. The ADO supports the introduction of additional tools to allow authorised officers to educate animal keepers as part of their enforcement options.

15-16. Administration

The ADO recommends that consideration be given to establishing an independent authority to administer the new laws. Administration of animal welfare law and regulation requires a focused and independent approach which is increasingly recognised as being best delivered by an independent statutory authority dedicated to animal protection.

Thank you for taking our submissions into consideration.

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²³ The Plan p69.

²⁴ The Plan p69.