



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

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Department of Energy, Environment and Climate Action
Engage Victoria

By digital upload: <https://engage.vic.gov.au/project/new-animal-welfare-act-victoria/page/make-a-submission-on-the-draft-bill>

Dear Sir/Madam

Re: Consultation on the Draft Animal Care and Protection Bill

Thank you for the opportunity to provide a submission on the draft Animal Care and Protection Bill (**the draft Bill**).

Our comments on the draft Bill are set out below.

About the Animal Defenders Office

The Animal Defenders Office (**ADO**) is a not-for-profit community legal centre that specialises in animal law. The ADO is run by volunteers and provides pro bono animal law services to the community. The ADO is a member of Community Legal Centres Australia Inc., the national peak body representing community legal centres across Australia.

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

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THE ADO'S SUBMISSIONS AND RECOMMENDATIONS IN RESPECT OF THE CONSULTATION ON THE DRAFT ANIMAL CARE AND PROTECTION BILL *

Summary of recommendations

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| PART 1 RECOMMENDATIONS | <ul style="list-style-type: none"> • Amend cl 2 to include the object of promoting an understanding of the sentience and intrinsic value of animals. • Amend cl 6 to include reference to the intrinsic value of animals. |
| PART 3 RECOMMENDATION | <ul style="list-style-type: none"> • Amend cl 34 to provide that a person who carries out a specified activity does not contravene the relevant Part 3 offence provision if the activity is carried out 'in a manner that inflicted no unnecessary pain upon the animal'. |
| PART 4 RECOMMENDATIONS | <ul style="list-style-type: none"> • Amend cl 37 to include the following as controlled procedures: <ul style="list-style-type: none"> ○ Hatching projects using animals in schools. ○ Mulesing sheep. ○ Dehorning cattle. • Amend cl 51 to insert after 'that Act' the following words: 'and the person used or set the trap in a manner that inflicted no unnecessary pain upon an animal'. |
| PART 5 RECOMMENDATION | <ul style="list-style-type: none"> • Amend the exception provisions in Part 5 to include that the person specified in the provision (the potential offender) must have acted in a manner that inflicted no unnecessary pain upon an animal. |
| PART 6 RECOMMENDATION | <ul style="list-style-type: none"> • Insert in cl 96 the requirement that a Part 6 licence must be subject to a condition that the holder of the licence comply with the Act and regulations. |
| PART 8 RECOMMENDATION | <ul style="list-style-type: none"> • Insert in cl 119 the requirement that a Part 8 licence must be subject to a condition that the holder of the licence comply with the Act and regulations. |
| PART 10 RECOMMENDATIONS | <ul style="list-style-type: none"> • Insert in Part 10 Division 2 ('Approved industry arrangements') requirements that the Minister: <ul style="list-style-type: none"> ○ Issues a public consultation notice inviting the public to give a written submission to the Minister about a proposed industry arrangement; and ○ Considers the submissions as part of the decision-making process in cl 154 of the draft Bill. • Insert in cl 154 of the draft Bill a requirement that the Minister must be satisfied a proposed industry arrangement would meet or exceed the care requirements in the Act. • Insert in cl 154 of the draft Bill a requirement that the Minister impose a condition on an approved industry arrangement that the Act and regulations must be complied with. • Remove cl 158 from the Bill. |
| PART 11 RECOMMENDATIONS | <ul style="list-style-type: none"> • Insert in cl 180 a note that police officers are authorised officers under the definition of <i>authorised officer</i> in cl 4. • Insert in cl 216 a requirement that the Minister must, before taking action under cl 216 to destroy a seized animal, give written notice to a minimum |

* The ADO is aware that the draft Bill has implications for a wide range of animal species. The absence of discussion on a particular topic of animal welfare should not be taken as an indication that the ADO approves of the current state of the law or the proposed changes to it in the draft Bill.

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| | number of rescue organisations that the animal is available for care and allow a specified time during which the animal will be available.¹ |
| PART 15 RECOMMENDATION | <ul style="list-style-type: none"> • Insert mandatory requirements in clause 310 that: <ul style="list-style-type: none"> ○ the Minister must appoint at least one member of the Expert Advisory Committee under cl 310(4)(d) or (e); and ○ together categories (4)(d) and (e) must together represent at least one-third of the Committee membership. |
| ADDITIONAL RECOMMENDATIONS | <ul style="list-style-type: none"> • Include the unjustifiable killing of an animal as an act of cruelty. • Extend the application of the proposed guiding principles in cl 27 to the whole Bill. • Prohibit specific events and practices involving animals such as rodeos, greyhound racing, and keeping pigs in an intensive environment, on the grounds they are contrary to the proposed purposes, object and principles in the draft Bill. |

Comments on specific provisions in the draft Bill

1. The ADO makes the following comments on specific provisions in the draft Bill.

Table 1. ADO comments on specific provisions

| Draft Bill (section) | Comments |
|-----------------------------------|--|
| Part 1 Preliminary | |
| 2 Object | <ul style="list-style-type: none"> • While the ADO welcomes the inclusion of an objects clause in the draft Bill, the ADO submits that it should include the promotion of an understanding that animals are sentient beings as per the <i>Animal Welfare Act 1992 (ACT)</i> s4A(1). This fundamental aspect of our understanding of animals must be included in the key provision guiding the interpretation of the statute as a whole and providing a justification as to why the care and protection of animals is important. |
| 4 Definitions | <ul style="list-style-type: none"> • The ADO suggests that the current definition of <i>animal</i> is too complex and would place an undue burden on enforcement officers or prosecutors to prove what is an ‘adult’ or whether a specified animal is ‘capable of self-feeding’ or above ‘the normal mid-point 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). |
| 6 Principle of sentience | <ul style="list-style-type: none"> • While the ADO welcomes the acknowledgement of the sentience of animals as a principle, it is submitted that this would be better placed in the objects clause so as to provide guidance to the interpretation of the Act as well as to its administration. • The ADO submits the principle of sentience should refer to an animal’s intrinsic value based on the animal’s sentience.² |
| PART 1 RECOMMENDATIONS | <ul style="list-style-type: none"> • Amend cl 2 to include the object of promoting an understanding of the sentience and intrinsic value of animals. • Amend cl 6 to include reference to the intrinsic value of animals. |

¹ See the *Companion Animals Act 1998 (NSW)* [s64B](#) for a provision containing similar terms regarding seized or surrendered animals.

² The ACT’s animal protection law states that the main objects of the Act are to recognise that animals are sentient beings able to subjectively feel and perceive the world around them; and that animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value (*Animal Welfare Act 1992 (ACT)* s 4A(1)(a)-(b)).

| Draft Bill (section) | Comments |
|---|---|
| Part 3—Animal care and protection obligations | |
| Division 3—Exceptions to offences under this Part | |
| 34 Exceptions for activities regulated by other Acts | <ul style="list-style-type: none"> The ADO strongly objects to proposed cl 34. A jurisdiction’s animal welfare law should apply to the treatment of any animal regardless of what other law may regulate the activity. Otherwise acts of cruelty, or inflicting pain, harm or distress, that are unreasonable in the specific context in which the action is occurring, are permitted, which contradicts the purposes and object of the draft Bill and its principle of sentience. An animal welfare law should contain its own exceptions. For example, NSW’s animal welfare law specifies that an activity is exempt <i>provided it causes ‘no unnecessary pain’</i>,³ with ‘unnecessary’ to be determined with reference to the particular context in which the activity is occurring. To provide fewer protections than the NSW law, which is the oldest animal welfare law currently in effect in Australia, would be a retrograde step and undermine the purposes, object and principles of Victoria’s proposed animal care and protection law. |
| PART 3 RECOMMENDATION | <ul style="list-style-type: none"> Amend cl 34 to provide that a person who carries out a specified activity does not contravene the relevant Part 3 offence provision if the activity is carried out ‘in a manner that inflicted no unnecessary pain upon the animal’. |
| Part 4—Control and regulation of certain uses of animals and related practices | |
| Division 2—Restricted procedures | |
| 36 Offences for restricted procedures | <ul style="list-style-type: none"> This provision will need to be assessed once the regulations are drafted. |
| Division 3—Controlled procedures | |
| 37 Offence to perform controlled procedures on animals | <ul style="list-style-type: none"> The ADO submits the specified controlled procedures in cl 37 should include: <ul style="list-style-type: none"> hatching projects using animals in schools. Hatching projects are acknowledged around the world as having significant animal welfare issues;⁴ and mulesing sheep and dehorning cattle. These procedures inflict unnecessary pain on the animal.^{5 6} |
| Division 4—Heritable defects | |
| | <ul style="list-style-type: none"> This Division will need to be assessed when the draft regulations with the specified heritable defects are released. |
| Division 6— Electronic shock devices and traps | |
| Subdivision 1 Electronic shock devices | <ul style="list-style-type: none"> This Subdivision will need to be assessed when the draft regulations with the prescribed devices and permitted uses are released. |
| Subdivision 2 Traps | <ul style="list-style-type: none"> This Subdivision will need to be assessed when the draft regulations with the prescribed traps and uses or settings of traps are released. |

³ *Prevention of Cruelty to Animals Act 1979* (NSW) s 20.

⁴ 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/>.

⁵ In lay terms, mulesing consists of slicing flesh from the backsides of lambs. The procedure is regarded as ‘painful’, with ‘acute pain’ that is ‘long lasting’, and resulting in ‘poor welfare both during and after the procedure’: RSPCA Australia (2023), ‘What is the RSPCA’s view on mulesing and flystrike prevention in sheep’, *RSPCA Knowledgebase*, updated 9 May 2023, <https://kb.rspca.org.au/knowledge-base/what-is-the-rspcas-view-on-mulesing-and-flystrike-prevention-in-sheep/>.

⁶ Temple Grandin has said that, when it comes to cattle, ‘dehorning is the single most painful thing we do.’ ABC News, ‘Dehorning: ‘Standard Practice’ on Dairy Farms’, 2010; <https://abcnews.go.com/Blotter/dehorning-standard-practice-dairy-farms/story?id=9658414>. See also M Slezak and P Timms, ‘Australia’s GM hornless cows and the science experiment that went wrong’, ABC News, 2020, <https://www.abc.net.au/news/2020-03-14/genetically-modified-cows-no-horns-in-australia/12018078?nw=0>.

| Draft Bill (section) | Comments |
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| 51 Exceptions to using and setting offences— Fisheries Act 1995 | <ul style="list-style-type: none"> The ADO does not support the proposed blanket exception in cl 51 because it would be contrary to and undermine the proposed purposes, object and principles of the draft Bill. The exception should be subject to the limitation that the person who uses or sets the trap does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the context. |
| PART 4 RECOMMENDATIONS | <ul style="list-style-type: none"> Amend cl 37 to include the following as controlled procedures: <ul style="list-style-type: none"> Hatching projects using animals in schools. Mulesing sheep. Dehorning cattle. Amend cl 51 to insert after ‘that Act’ the following words: ‘and the person used or set the trap in a manner that inflicted no unnecessary pain upon an animal’. |
| Part 5—Control and regulation of specified classes of conduct | |
| Division 1—Killing, wounding or capturing an animal | |
| 59 Offence to kill, wound or capture an animal for a specified reason in contravention of regulations | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to killing, wounding or capturing are released. |
| 61 Exceptions to offences under this Division | <ul style="list-style-type: none"> The ADO does not support the proposed provisions in cl 61(a) – (c) and (e)(ii). These provisions currently provide blanket exceptions to the offence provisions in cl. 59 and 60 of the draft Bill, if the potential offender is operating under the specified Act or an industry arrangement. The effect of cl 61(a) – (c) and (e)(ii) is to subordinate Victoria’s animal welfare laws to animal use and exploitation laws and industry arrangements, which undermines the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. The ADO therefore submits that the exceptions in cl 61(a) – (c) and (e)(ii) should be subject to the limitation that the person undertaking the specified activities does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the context in which the activity is undertaken. |
| Division 2— Using animals in demonstrations of products etc. on animals | |
| 63 Offence to use animals in demonstrations of products etc. in contravention of the regulations | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to using animals in the specified way are released. |
| 65 Exceptions to offences under this Division | <ul style="list-style-type: none"> The ADO does not support cl 65 (a), (b), and (d)(ii). These provisions would create blanket exceptions to the offence provisions in cl. 63 and 64 of the draft Bill, if the potential offender is operating under another Act or an industry arrangement. The effect of cl 65 (a), (b), and (d)(ii) would be to subordinate Victoria’s animal welfare laws to laws regulating the use and exploitation of animals, and to industry arrangements. This would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements |

| Draft Bill (section) | Comments |
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| | <p>involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with.</p> <ul style="list-style-type: none"> The ADO therefore submits that the exceptions in cl 65 (a), (b), and (d)(ii) should be subject to the limitation that the person using the animal does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the context in which the animal is being used. |
| Division 3—Carrying out certain procedures on animals | |
| <p>70 Exceptions to offences under this Division</p> | <ul style="list-style-type: none"> The ADO does not support cl 70(a) and (c)(ii). These provisions would create blanket exceptions to the offence provisions in cl 68 and 69 of the draft Bill, if the potential offender is operating under the specified Act or an industry arrangement. The effect of cl 70(a) and (c)(ii) would be to subordinate Victoria’s animal welfare laws to laws regulating the use and exploitation of animals, and to industry arrangements. This would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. The ADO therefore submits that the exceptions in cl 70(a) and (c)(ii) should be subject to the limitation that the person undertaking the specified procedure does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the context in which the procedure is undertaken. |
| Division 4—Administering certain substances to animals | |
| <p>73 Offence to administer substance to an animal for a specified reason in contravention of the regulations</p> | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to administering a substance to an animal for a specified reason are released. |
| <p>75 Exceptions to offences under this Division</p> | <ul style="list-style-type: none"> The ADO does not support cl 75 (a)-(c) and (e)(ii). These paragraphs would create blanket exceptions to the offence provisions in cl 73 and 74 of the draft Bill, if the potential offender is operating under the specified Acts or an industry agreement. The effect of cl 75 (a)-(c) and (e)(ii) would be to subordinate Victoria’s animal welfare laws to animal use and exploitation laws and industry arrangements, which would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. Therefore the ADO submits that the exceptions in cl 75 (a)-(c) and (e)(ii) should be subject to the limitation that the person administering the substance does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the specific context. |
| Division 5— Showing or exhibiting animals or using animals for entertainment | |
| <p>77 Offence to show or exhibit animals in contravention of regulations</p> | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to showing or exhibiting animals are released. |
| <p>78 Offence to use animals in entertainment productions in contravention of regulations</p> | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to using animals in entertainment productions are released. |
| <p>81</p> | <ul style="list-style-type: none"> The ADO does not support cl 81. This provision would create blanket exceptions to the offence provisions in cl. 77 – 80 of the draft Bill, if the |

| Draft Bill (section) | Comments |
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| <p>Exceptions to offences under this Division</p> | <p>potential offender is operating under the specified Act or an industry arrangement. The effect of cl 81 would be to subordinate Victoria’s animal welfare laws to animal use and exploitation laws and industry arrangements, which would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with.</p> <ul style="list-style-type: none"> • The ADO therefore submits that the exceptions in cl 81 should be subject to the limitation that the person undertaking the specified activities does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the specific context. |
| <p>Division 6—Keeping an animal in an intensive environment</p> | |
| <p>82 Offence to carry on a business of keeping animals in intensive environment in contravention of regulations</p> | <ul style="list-style-type: none"> • This provision will need to be assessed when the draft regulations that apply to keeping animals in an intensive environment are released. |
| <p>84 Exceptions to offences under this Division</p> | <ul style="list-style-type: none"> • The ADO does not support cl 84(a) and (c)(ii). These provisions would create blanket exceptions to the offence provisions in cl 82 and 83 of the draft Bill, if the potential offender is operating under the specified Act or an industry arrangement. The effect of cl 84(a) and (c)(ii) would be to subordinate Victoria’s animal welfare laws to animal use and exploitation laws and industry arrangements, which would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. • The ADO therefore submits that the exceptions in cl 84(a) and (c)(ii) should be subject to the limitation that the person undertaking the specified procedure does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the specific context. |
| <p>Division 7— Animal transporting</p> | |
| <p>86 Offence to carry on a business of animal transporting in contravention of regulations</p> | <ul style="list-style-type: none"> • This provision will need to be assessed when the draft regulations that apply to animal transporting are released. |
| <p>88 Exceptions to offences under this Division</p> | <ul style="list-style-type: none"> • The ADO does not support cl 88(a) and (b)(ii). These provisions would create blanket exceptions to the offence provisions in cl 86 and 87 of the draft Bill, if the potential offender is operating under the specified Act or an industry arrangement. The effect of cl 88(a) and (b)(ii) would be to subordinate Victoria’s animal welfare laws to animal use and exploitation laws and industry arrangements, which would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to all laws and industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. • The ADO therefore submits that the exceptions in cl 88(a) and (b)(ii) should be subject to the limitation that the person undertaking the specified procedure |

| Draft Bill (section) | Comments |
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| | does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the specific context. |
| Division 8—Activities and events involving animals | |
| 89 Offence relating to activities involving animals that contravene regulations | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to activities involving animals are released. |
| 90 Offence relating to events involving animals that contravene regulations | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations that apply to events involving animals are released. |
| 93 Exceptions to offences under this Division | <ul style="list-style-type: none"> The ADO does not support cl 93. This provision would create blanket exceptions to the offence provisions in the proposed Division 8 of the draft Bill, if the potential offender is operating in accordance with an industry arrangement. The effect of cl 93 would be to subordinate Victoria’s animal welfare laws to industry arrangements, which would undermine the purposes, object and principles of the draft Bill, being to provide for animal care and protection. The draft Bill should apply to industry arrangements involving animals to ensure appropriate standards of animal welfare are maintained in all contexts in which animals are used or interacted with. The ADO therefore submits that the exceptions in cl 93 should be subject to the limitation that the person undertaking the specified activities does so ‘in a manner that inflicts no unnecessary pain upon the animal’, with ‘unnecessary’ determined by the specific context. |
| PART 5 RECOMMENDATION | <ul style="list-style-type: none"> Amend the exception provisions in Part 5 to include that the person specified in the provision (the potential offender) must have acted in a manner that inflicted no unnecessary pain upon an animal. |
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| Part 6—Licences for certain conduct controlled and regulated under Parts 4 and 5 | |
| Division 2—Conditions for Part 6 licences | |
| 96 Conditions on Part 6 licences | <ul style="list-style-type: none"> This provision will need to be assessed when the draft regulations prescribing conditions are released. The ADO submits that the draft Bill should specify that compliance with this Act and the regulations is a mandatory condition for Part 6 licences. |
| PART 6 RECOMMENDATION | <ul style="list-style-type: none"> Insert in cl 96 the requirement that a Part 6 licence must be subject to a condition that the holder of the licence comply with the Act and regulations. |
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| Part 8—Scientific licences | |
| Division 2—Authorisation to carry out certain conduct or use certain devices | |
| 118 Part 4 does not apply to activities carried out under authorisation | <ul style="list-style-type: none"> The current wording of cl 118 may need reviewing for clarity. |
| Division 3—General provisions applying to scientific licences | |
| 119 Conditions on scientific licences | <ul style="list-style-type: none"> The ADO submits that the draft Bill should specify that compliance with this Act and the regulations is a mandatory condition for scientific licences. |
| PART 8 RECOMMENDATION | <ul style="list-style-type: none"> Insert in cl 119 the requirement that a Part 8 licence must be subject to a condition that the holder of the licence comply with the Act and regulations. |
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| Draft Bill (section) | Comments |
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| Part 10—Other regulatory processes | |
| Division 2— Approved industry arrangements | |
| Subdivision 1— Approval of industry arrangements and related approvals | |
| 153 Application for approval or renewal of approval | <ul style="list-style-type: none"> • Clause 153(1) of the draft Bill provides that a ‘person who is connected with an industry’ may apply for approval of an industry arrangement. • As the arrangements would be by industry and for industry, it is essential for transparency, and to ensure the industry’s social licence to operate, that the public be consulted about the content of the arrangements. |
| 154 Ministerial decision on application | <ul style="list-style-type: none"> • The Guide to the Bill states that ‘When considering whether to approve an arrangement, the Minister must be satisfied the proposed arrangement would meet or exceed Victoria’s care and protection laws.’⁷ • The ADO submits that this should be included as an express matter of which the Minister must be satisfied before the Minister makes a decision under proposed cl 154. |
| 157 Conditions on approved industry arrangement | <ul style="list-style-type: none"> • The ADO submits that the draft Bill should impose a mandatory condition of compliance with the Act and the regulations on approved industry arrangements. • This would ensure that the minimum standards proposed in the draft Bill would apply to animal-use industries, in accordance with the purposes, object and principles of the draft Bill. |
| 158 Effect of approved industry arrangement | <ul style="list-style-type: none"> • The ADO does not support cl 158 which would allow the Minister to exempt the approved industry arrangement from provisions of the Act and the regulations. This would include core cruelty offences in Part 3, and offences in Part 5 and the regulations (cl 158(3)). • Given the many ways industries can inflict harm and suffering on animals by using them, it is imperative that these offence provisions apply to these industries. To exempt them would undermine and be completely opposed to the purposes, object and principles of the draft Bill. • The ADO submits that cl 158 be removed from the Bill. |
| 160 Contents of approved industry arrangements | <ul style="list-style-type: none"> • Clause 160(2) would require that approved industry arrangements must include matters that are prescribed by the regulations. • This provision will need to be assessed when the draft regulations prescribing such matters are released. |
| PART 10 RECOMMENDATIONS | <ul style="list-style-type: none"> • Insert in Part 10 Division 2 (‘Approved industry arrangements’) requirements that the Minister: <ul style="list-style-type: none"> ○ Issues a public consultation notice inviting the public to give a written submission to the Minister about a proposed industry arrangement; and ○ Considers the submissions as part of the decision-making process in cl 154 of the draft Bill. • Insert in cl 154 of the draft Bill a requirement that the Minister must be satisfied a proposed industry arrangement would meet or exceed the care requirements in the Act. • Insert in cl 154 of the draft Bill a requirement that the Minister impose a condition on an approved industry arrangement that the Act and regulations must be complied with. • Remove cl 158 from the Bill. |
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⁷ Department of Energy, Environment and Climate Action (VIC), *Guide to draft Animal Care and Protection Bill*, December 2023, p 37.

| Draft Bill (section) | Comments |
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| Part 11—Enforcement notices, orders and related powers | |
| Division 1—Authorised officers | |
| 180 Appointment | <ul style="list-style-type: none"> The ADO submits that for the avoidance of doubt, cl 180 should include a note that police officers are authorised officers under par. (b) of the definition of <i>authorised officer</i> in cl 4 of the draft Bill. |
| Division 8—Urgent seizure and disposal notice | |
| 216 Urgent seizure and disposal authorisation | <ul style="list-style-type: none"> The ADO submits that the power to dispose of animals proposed in cl 216 is too broad and may result in ‘convenience killing’—that is, where it is ‘convenient’ to kill animals rather than provide care for them due to the number of the animals or other similar factor. This may apply particularly to farmed animals, who are often kept in large numbers. The ADO submits that authorities must, before taking action under cl 216 to destroy a seized animal, give written notice to rehoming or rescue organisations that the animal is available for care.⁸ |
| PART 11 RECOMMENDATIONS | <ul style="list-style-type: none"> Insert in cl 180 a note that police officers are authorised officers under the definition of <i>authorised officer</i> in cl 4. Insert in cl 216 a requirement that the Minister must, before taking action under cl 216 to destroy a seized animal, give written notice to a minimum number of rescue organisations that the animal is available for care and allow a specified time during which the animal will be available.⁹ |
| Part 12—Powers to enter, inspect and search and related matters | |
| Division 1— Entry of public places or with consent | |
| 221 Entry with consent | <ul style="list-style-type: none"> It would be useful to clarify in this provision that <i>thing</i> does not include an animal (if that is the intention), given that animals are regarded as property under the law. In the alternative, a definition of <i>thing</i> may be useful for the whole Part, given the use of the term in other provisions eg cl 260. |
| 229 Entry of premises or a vehicle to monitor compliance with licences or compliance inspection program | <ul style="list-style-type: none"> Clause 229(1)(a) refers to ‘a <u>licenced</u> activity’. The adjective is conventionally spelt ‘licensed’. |
| Part 13—Powers and processes as to seized animals and things and related matters | |
| Division 1— Entry of public places or with consent | |
| 279 Animal required for court proceedings | <ul style="list-style-type: none"> Clauses 279(1)(b)(ii) and (3)(b)(ii) appear to be missing an article: ‘whether [the] animal’s care requirements are...’ |
| 280 Notice of forfeiture | <ul style="list-style-type: none"> Clause 280(b) repeats the word ‘must’ that is already in the chapeau. |
| Part 15—Miscellaneous | |
| Division 1—Expert Advisory Committee and Special Expert Advisory Committee | |
| 310 Membership of Expert Advisory Committee | <ul style="list-style-type: none"> The ADO submits that the draft Bill should require that the proposed Expert Advisory Committee must contain at least one member from the category specified in cl 310(4)(d) or (e), and that categories (4)(d) and (e) must together represent at least one-third of the Committee membership. Otherwise it is |

⁸ See the *Companion Animals Act 1998* (NSW) [s64B](#) for a provision containing similar terms regarding seized or surrendered animals.

⁹ See the *Companion Animals Act 1998* (NSW) [s64B](#) for a provision containing similar terms regarding seized or surrendered animals.

| Draft Bill (section) | Comments |
|-----------------------------------|---|
| | possible that the Committee could be established and operate without any animal welfare or ethical standards member. |
| PART 15 RECOMMENDATION | <ul style="list-style-type: none"> • Insert mandatory requirements in clause 310 that: <ul style="list-style-type: none"> ○ the Minister must appoint at least one member of the Expert Advisory Committee under cl 310(4)(d) or (e); and ○ together categories (4)(d) and (e) must together represent at least one-third of the Committee membership. |

2. The ADO makes the following additional submissions in relation to the draft Bill. These additional submissions expand on the comments on specific provisions in the draft Bill outlined in Table 1.

Principle of animal sentience

3. The ADO welcomes Victoria’s decision to follow the Australian Capital Territory (ACT)¹⁰ and international precedents¹¹ in recognising animal sentience in the draft Bill. However, the ADO submits that there is scope for contextualising the recognition of animal sentience in a way that could enable it to be used more effectively as an interpretive aid.
4. As explained in a recent scholarly survey of the different ways to recognise sentience, the legislative context of a provision can have an impact on its legal consequences.¹² Currently, animal sentience is a *principle* of the draft Bill. Principles are generally ‘intended to indicate to decision-makers the standards that should be considered when understanding or implementing the legislation.’¹³ To the extent that cl 6 of the Bill would apply to the actions of decision-makers, this is a welcome addition.
5. However, the ADO is concerned that animal sentience does not feature in the proposed object of the draft Bill. This contrasts with, for example, the recognition of sentience in the objects clause of the *Animal Welfare Act 1992* (ACT) (s 4A). The objects of an Act are important guides to legislative interpretation. As an example, the primary cruelty offence under cl 21(1) of the draft Bill would be to cause unreasonable harm, pain or distress to an animal. However the standard of ‘reasonableness’ here is unclear, such that its interpretation could depend on whether it was to be read in light of a recognition of animal sentience or not.¹⁴
6. The ADO notes that s 15AA of the *Acts Interpretations Act 1901* (Cth) makes clear that a legislative object need not feature in the objects section to be relevant. So, in theory, recognising animal sentience could be construed as an object of the draft Bill. However, this is less likely in the draft Bill’s current form, considering that cl 6(1) expressly uses the language of ‘administration’, as opposed to ‘interpretation’.

¹⁰ *Animal Welfare Act 1992* (ACT), s 4A.

¹¹ See for example the *Animal Welfare (Sentience) Act 2022* (UK).

¹² Jane Kotzmann, ‘A Typology of Australian Animal Sentience Recognition Provisions — Enacted and Proposed’ (2023) 51(2) *Federal Law Review* 157-181.

¹³ *Ibid* 175.

¹⁴ Kotzmann (n 3) 175.

7. To this end, the ADO submits that (a) the draft Bill *should* be interpreted in accordance with recognising animal sentience, and (b) the strongest way to do so would be to include the recognition as a guiding principle in the objects clause. Importantly, this means *in addition to* it being a principle. The ADO submits that the long-overdue recognition in law that animals are sentient should inform not only how decision-makers understand and implement the law but also how it is interpreted; they serve two complementary functions.
8. Finally, the ADO submits that the draft Bill should also recognise the intrinsic value of animals that is commonly acknowledged as a consequence of their sentience. For example, the ACT’s animal protection law recognises that:¹⁵
- (a) animals are sentient beings that are able to subjectively feel and perceive the world around them; and
 - (b) **animals have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value;** and
 - (c) people have a duty to care for the physical and mental welfare of animals.
9. The ADO submits that this would provide useful context to the recognition of sentience for the purposes of administering and interpreting the Act.
10. The ADO also shares the concerns of others in the community that the draft Bill does not do enough to ‘protect all – not just some animals – from cruelty.’¹⁶ The ADO notes that exemptions still exist for animals used in entertainment, research and agriculture.¹⁷ As such, the unacceptable inference is that sentience only matters some of the time.

New framework for animal cruelty offences

11. The draft Bill sets out a multi-tiered framework for protecting animal welfare, involving care requirements, and generic and specific offences for cruelty, aggravated cruelty, and intentional cruelty. While the ADO generally supports this framework, the ADO makes the following submissions about some aspects of the proposed framework.
12. The ADO is concerned about the scope of the cruelty offence proposed in the draft Bill. On the one hand, the ADO welcomes the application of the cruelty offences to both physical and

¹⁵ *Animal Welfare Act 1992* (ACT) s4A(1), emphasis added.

¹⁶ B Kolovos, ‘Animals to be recognised as sentient beings under proposed Victorian cruelty laws’, *The Guardian*, 14/11/2023, quoting Georgie Purcell MP (Animal Justice Party Victoria (**AJP**)), <https://www.theguardian.com/australia-news/2023/nov/14/animals-sentient-beings-victorian-cruelty-laws>.

¹⁷ As the AJP has noted, ‘If activities carry a high risk to animals, then they should not be permitted. It’s inconsistent to recognise that animals are sentient, then undermine this by allowing activities that carry a high risk of causing animals to experience pain and fear.’ In *Animal Justice Party Guide to Making a Submission*, https://assets.nationbuilder.com/animaljusticeparty/pages/2043/attachments/original/1665270968/AJPs_Submission_Guide_to_PLAN_FOR_VICTORIA%E2%80%99S_NEW_ANIMAL_CARE_AND_PROTECTION_LAWS.pdf?1665270968.

mental suffering (for example, cl 23(1)(b)) as being clearly in accordance with the proposed principle of animal sentience in cl 6 (1)(b). However, the ADO would like to see Victoria align with other jurisdictions and include the unjustifiable killing of an animal as an act of cruelty. For example, the *Prevention of Cruelty to Animals Act 1979* (NSW) provides that an act of cruelty encompasses ‘any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably [inter alia] killed’ (s4(2)(a)). Including this in the definition of an act of cruelty therefore recognises - in the ADO’s view, correctly – that the unjustifiable death of an animal *is itself* an act of cruelty.

13. Moreover, cl 27 of the draft Bill specifies ‘guiding principles’ for the interpretation and application of the part of the draft Bill dealing with acts of cruelty, aggravated cruelty, and intentional cruelty (Division 2 of Part 3). The ADO supports the inclusion of these ‘guiding principles’ but notes that they would be excluded from aiding the interpretation and application of other parts of the statute, particularly **Division 3—Exceptions to offences under this Part**. The ADO submits that these principles should inform the interpretation and application of the entire Part, if not the whole statute, rather than merely Division 2 of Part 3.

Exceptions contrary to the principle of sentience—animals used for entertainment and keeping animals in intensive environments

14. The draft Bill would allow animal entertainment activities such as rodeos and greyhound racing to occur.¹⁸
15. The ADO submits that allowing these activities to occur would be contrary to the purposes, object and principles enshrined in the draft Bill. The ADO submits that the draft Bill should instead prohibit events that inflict significant cruelty on animals for mere entertainment. As detailed in our comments on the provisions of the draft Bill, this could be achieved by removing exemptions from cruelty offences that would allow these events to occur. Given that the proposed definition of an act of cruelty is if ‘unreasonable harm, pain or distress is caused’ (cl 21(1)(a)), the ADO submits that it is not reasonable, justified, or necessary to carry out a mere entertainment activity that, but for the proposed exceptions under the Act, would constitute unlawful animal cruelty.
16. In any case, it is the ADO’s view that alleged ‘benefits’ of these activities to humans, such as social impact, economic development, employment potential and financial benefit,¹⁹ are not unique to these activities. The ADO submits that other forms of entertainment that do not involve cruel animal practices, such as all-human circuses or races, could attract tourists, provide an activity for local residents, and boost the local economy.

¹⁸ Proposed definition of *event involving animals* in cl 4. See also a sample government press release regarding the draft Bill: <https://www.premier.vic.gov.au/new-bill-strengthen-animal-welfare-standards>. It states that ‘[t]here is nothing in the Bill to prevent activities like farming, fishing, hunting and racing from continuing.’

¹⁹ In relation to rodeos, see for example the alleged benefits to the community proposed by a NSW Council: *Report to Ordinary Meeting of Eurobodalla Shire Council Held on Tuesday 22 November 2022*, p60, https://www.esc.nsw.gov.au/_data/assets/pdf_file/0008/225881/Agenda-Public.pdf.

Rodeos—calf roping

17. The standard rodeo event known as ‘calf roping’ is the most controversial event from an animal welfare perspective. The event is also known as ‘rope and tie’ and involves a calf as young as four months being chased by a rider, lassoed around the neck, jerked off their feet, and caused to crash to the ground. Rodeos are currently regulated by the *Prevention of Cruelty to Animals Regulations 2019* (VIC). Regulation 82 provides that ‘The holder of a rodeo licence, rodeo permit or rodeo school permit must not permit an animal that weighs less than 200 kilograms to take part in a rodeo or rodeo school held under the licence or permit.’ Whilst this may prevent some rope and tie events from occurring (ie those with animals below the stipulated weight), the ADO submits that an outright ban²⁰ on calf-roping in the draft Bill would send a stronger message to the community in light of the recognition of sentience²¹ and be easier to enforce (by avoiding having to prove an animal did not meet the weight requirement).

Greyhound racing

18. As is by now well known, the treatment of greyhounds in the greyhound racing industry has come under increased scrutiny in Australia in recent times. In 2016 the report produced by the Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, led by retired High Court Judge Michael McHugh QC, revealed significant animal welfare problems inherent in the industry (**the McHugh Report**).²² These include live baiting, mass disposal of greyhounds, overbreeding, and inappropriate housing and training techniques. Greyhound racing was subsequently banned in the ACT and remains banned in that jurisdiction to the present day.²³ Globally, the industry is reportedly phased out in most jurisdictions in which it was once practised.²⁴ Despite the significant animal welfare concerns, the industry is still legal in Victoria. In addition to animal welfare issues, the ADO submits that the greyhound racing industry is detrimental to the social fabric of human communities, given issues such as problem gambling and the widespread discontent with the continued existence of the industry.

²⁰ Rodeos are prohibited in the ACT on animal welfare grounds: *Animal Welfare Act 1992* (ACT) s 18(1). According to the prohibition, a person commits a criminal offence if the person conducts or takes part in a rodeo. The offence is punishable by imprisonment for one year or a penalty of up to \$16,000, or both. This blanket ban demonstrates the seriousness of the animal welfare concerns associated with rodeos.

²¹ See generally Morgan Stonebridge, Di Evans, and Jane Kotzmann, ‘Sentience Matters: Analysing the Regulation of Calf-Roping in Australian Rodeos’ (2022) 12(9) *Animals* 1071, <https://doi.org/10.3390/ani12091071>: ‘Ultimately, where sentience is accepted as the primary purpose for preventing unreasonable and unnecessary harm to animals, the continued use of young calves in rope-and-tie events appears to be inconsistent with the purpose of animal welfare legislation and must raise questions about the adequacy of legal protection’ at [1077].

²² *Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales. Report*, 16 June 2016, Michael McHugh AC QC, https://apo.org.au/sites/default/files/resource-files/2016-07/apo-nid65365_5.pdf.

²³ *Animal Welfare Act 1992* (ACT), section 18A: (1) A person commits an offence if the person—
(a) conducts, or facilitates the conduct of, a greyhound race in the ACT; or (b) allows a greyhound kept by the person to take part in a greyhound race conducted in the ACT. Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

²⁴ Commercial greyhound racing reportedly occurs in only seven countries around the world: <https://grey2kusa.org/about/worldwide.php>; <https://faunalytics.org/greyhound-racing-a-winnable-issue/>.

19. For these reasons the ADO submits that the draft Bill should prohibit rather than exempt from its operation, the cruel and outdated activity of greyhound racing in Victoria.

Keeping pigs in intensive environments

20. The draft Bill would allow farmed animals such as pigs to be kept in intensive environments.²⁵ There is significant community concern about the welfare of pigs kept in these environments.²⁶ While the draft Bill does not directly address pig welfare, it would provide a blanket exception to the offence provisions relating to keeping animals in an intensive environment including intensive piggeries (cl 84). This is despite the draft Bill's proposed recognition of animal sentience and introduction of animal care requirements. The ADO strongly opposes such an exception, and submits that the draft Bill should provide for the phasing out of keeping animals such as pigs in intensive environments, rather than exempting these inherently harmful practices from the application of the State's animal protection laws.

Conclusion

The draft Bill presents Victoria with an opportunity to become a world leader by introducing principled and progressive reforms to animal welfare law. Substantial improvements, including those suggested in our submission, would be required to achieve this worthy objective. We hope this rare opportunity is not missed.

Thank you for considering our submissions.

Your sincerely

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Managing Solicitor and Legal Intern
Animal Defenders Office

²⁵ Draft Bill cl 4 definition of *intensive environment*.

²⁶ See the current inquiry into the welfare of farmed pigs in Victoria: <https://www.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-pig-welfare-in-victoria>.