Animal Defenders Office
Using the law to protect animals

ABN: 12837355070 | Member: CLCNSW Inc. | GPO Box 2259 Canberra ACT 2601 | www.ado.org.au | contact@ado.org.au
The Animal Defenders Office Inc. is accredited by the National Association of Community Legal Centres.

Legislation Reform
Department of Jobs, Precincts and Regions
1 Spring Street
Melbourne VIC 3000

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

Submission to the new Animal Welfare Act for Victoria—Directions Paper

Thank you for the opportunity to provide a submission to the Victorian Government's consultation on animal welfare reform in Victoria, as set out in *A New Animal Welfare Act for Victoria—Directions Paper* ("Directions Paper" or "DP").[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 exclusively by volunteers and offers pro bono legal assistance to individuals and groups wishing to protect animals. The ADO also 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 peak body representing the community law sector in Australia.

Our submissions

The ADO's submissions on the Directions Paper proposals are set out below.

1.1 Animal sentience - proposing to adopt an approach to recognising animal sentience, with the following options

Option 1: Refer to sentience in the Objects of the Act

Option 2: Refer to sentience in the Principles of the Act

Option 3: Refer to sentience in the Definition of animals covered by the Act.

The ADO ***strongly supports*** the recognition of animal sentience in any proposed animal welfare legislation in Victoria.

[1] Department of Jobs, Precincts and Regions, *A New Animal Welfare Act for Victoria—Directions Paper*, October 2020.

Regarding the proposed options (DP 18), the ADO ***prefers*** **Option 1**—that is, to refer to sentience in the Objects of the Act. This option is preferable because the purpose of an Act as outlined in its objects clause is a fundamentally important and accepted tool in interpreting legislation, whether in relation to perceived ambiguities in the text of the legislation, or in applying the legislation itself. An objects clause recognising animal sentience may therefore result in stronger animal welfare requirements and standards. For example, in theory it may be difficult for a court to find that a practice inflicting pain, suffering, or death on an animal is not an act of animal cruelty if the starting consideration, as outlined in the objects clause, is that animals are sentient.

The ADO is less inclined to support Option 2, as Principles clauses in legislation can tend to include 'motherhood statements' that do not have legal force, so there may not be much positive practical effect in recognising sentience in these clauses.

Option 3 may also be problematic as including sentience in the definition of 'animal' may lead to distinguishing animals by arguable 'degrees' of sentience. It is also less clear how including sentience in a definition could influence interpreting the Act as a whole and its overall objectives.

For these reasons the ADO views Option 1 as being the preferred way to recognise animal sentience in law.

1.2 Minimum standards of care - proposing to introduce a requirement for people to provide a minimum standard of care for animals

The ADO ***agrees*** with the premise that it is difficult to prevent cruelty to animals merely by detecting and prosecuting perpetrators once the cruelty has already been committed. Effective measures and requirements must be put in place to ensure that animals are not at risk of having pain and suffering inflicted upon them in the first place.

It is not uncontroversial that in a variety of circumstances humans have standards and duties of care placed upon them to ensure that those with duties of care towards others exercise the duty effectively, including by preventing harm to those in their care.

The ADO ***supports in principle*** the introduction of a minimum standard of care for animals, and the imposition of a duty of care on those responsible for the animals. The ADO agrees that animal welfare legislation in Australia has moved on from the mere prevention of cruelty, towards promoting the responsible care of animals. The ADO also notes that, despite the name of the current Victorian Act ('Prevention of Cruelty to Animals Act' ('POCTA Act')), most enforcement action that can be taken under the Act is retrospective rather than preventative. Including a minimum standard of care and imposing a corresponding duty to meet that standard would enhance the capacity to meet the goal of improving the protection of animals with whom humans interact.

However, as discussed in the Directions Paper, the merits of a minimum standard of care and corresponding duty of care will depend on the content of such requirements as set out in the new legislation. Industry notions of a minimum standard of care will be lower than the general community's conception of a minimum standard of care. The ADO reserves its support for such requirements until the elements of the requirements are proposed. The ADO ***recommends*** that animal protection representatives have equal representation in any body created to determine the elements of the minimum standard of care. In the interim, the ADO would ***support*** the elements in both the ACT and Queensland statutes (DP 19).

The ADO ***supports*** the description of the requirement to meet a minimum standard of care as a 'duty of care'. This term has positive connotations, potentially even including that individuals responsible for the care of an animal are the guardians of those animals, with a corresponding duty that they act in the best interests of that animal. In this way it would be expected that, as with guardianship laws, breaches of the duty attract penalties regardless of whether actual harm has been inflicted on the animal, as the failure to adhere to the duty is what creates the risk of animal suffering, which the new animal welfare law should rightly aim to prevent.

Depending on other elements in any proposed minimum standard, the ADO would ***support*** the standard applying to 'a person' as in the Queensland statute (DP 19), rather than 'a person in charge', lest the latter unnecessarily and/or unintentionally restrict the application of the minimum standard and its corresponding duty.

1.3 Prohibited acts - proposing to introduce a set of general escalating offence categories covering things a person must not do to animals.

The ADO ***agrees*** with the premise that limiting definitions of cruelty to specified actions, which are not broad enough to cover either all species or all forms of harm, is not sufficient. The spirit of the POCTA Act and preventing all forms of cruelty to animals requires an animal welfare law to have a broad prohibition of unnecessary harm, or actions likely to cause harm, with stronger penalties for egregious or aggravated acts.

The ADO considers that defining cruelty by specified acts rather than a general principle of unnecessary harm bears the risk that a number of actions that inflict pain, suffering, unnecessary harm or psychological distress to an animal that are not specified may not meet the threshold of animal cruelty under the Act.

The ADO ***endorses*** all four categories of the proposed escalating offences categories (DP 22).

The ADO ***supports*** the proposal that Category offences cover conduct causing or likely to cause pain or distress (etc) to an animal (DP 22). This would give the new Act more scope actually to prevent harm and cruelty to animals.

The ADO ***strongly supports*** a broad approach to determining aggravating factors in Category 3 offences, and to including factors such as 'a person's actions being driven by profit' (DP 22).

In the event that there are concerns that courts could interpret conduct as not falling within the offence categories, each offence category could include examples for interpretation purposes as including, but not limited to, the existing 'prohibited acts', as suggested in the Directions Paper itself (p22).

The ADO supports an increase in penalties for breaches of the new animal welfare laws. The ADO commends Victoria for having comparatively high financial penalties compared to other jurisdictions in Australia.[2] Victoria currently has the third highest financial penalty for cruelty and the second highest financial penalty for aggravated cruelty.[3] However, in relation to imprisonment, Victoria currently has the equal second lowest maximum imprisonment penalty for cruelty (1 year) and the equal lowest for aggravated cruelty (2 years).[4] The ADO would therefore ***support*** an increase in the

[2] https://www.ado.org.au/penalties-for-animal-cruelty-and-ne.

[3] Ibid, tables 1B and 1A.

[4] Ibid, tables 2B and 2A.

maximum imprisonment penalty for cruelty offences in the new animal welfare Act. An increase in the maximum financial penalties would also be welcome.

1.4 Controlled procedures - proposing to Provide a single regulatory framework for performing controlled procedures on animals

The ADO ***supports in principle*** a single governing framework regulating procedures on animals. However, the support is based on the understanding that only procedures in the best interests of the animal would be permitted, or, at worst, that adequate pain relief would be used for every procedure for as long as the procedure causes the animal pain or discomfort.

The ADO notes that most of the procedures listed in the Directions Paper are not in the best interests of the animal, and are performed purely for the benefit of industry (castration, ear-tagging, branding, and no doubt many forms of dentistry eg teeth clipping of farmed pigs). The Directions Paper acknowledges that these types of procedures involve 'the interference with or manipulation of an animal's body in a way that could cause harm, pain or distress' (p24).

The ADO would oppose any framework that effectively legalised harm or distress to an animal for the sake of industry practices or profit.

The ADO also does not support regulating or permitting any practices on animals that cause unnecessary pain or suffering to the animal. The ADO defines 'unnecessary' as being wholly based on the best interests of the animal, rather than broader industry or economic interests. Thus, a procedure should only be included in the regulatory scheme if it is performed in the animal's best interests, including the relieving of suffering or improving their quality of life rather than improving an industry's sustainability or bottom line. If we acknowledge certain industries' practices are inherently cruel and if there are no viable alternatives, including pain relief, then we as a community should reflect on why those industries should be allowed to continue the practice. If we truly care about the welfare and interests of animals, their sentience, and their ability to feel pain and suffering, it is probable that the practices would not be permitted to continue. Similarly, it should be acknowledged that we cannot absolve ourselves of these acts of legalised cruelty through regulation. Rather, we should acknowledge that these acts are cruel and not in the best interests of the animal, and reflect on whether these acts should continue.

The ADO also submits that recognising sentience in animal welfare legislation has little value if the same legislation allows procedures that unjustifiably infringe on an animal's sentience. The ADO submits that to allow these procedures to continue is self-contradictory and inconsistent.[5]

However, while it remains legal to perform these types of procedures, the ADO submits that they should be strictly regulated, with ongoing pain relief as a minimum mandatory requirement.

[5] In our view, to permit these contradictions is the logical equivalent of recognising in legislation the right to life as outlined in the *International Covenant on Civil and Political Rights*, whilst at the same time regulating permissible circumstances of imposing the death penalty. If you recognise a principle in legislation but then permit the breaching of that principle, you end up with a contradictory piece of legislation that disrespects the principles which it purports to recognise and promote.

Case study: mulesing

The practice of mulesing lambs or sheep involves slicing flesh from the rump of the animal for the purported purpose of disease prevention. It is widely regarded as being extremely painful for the animal, and, outside of Victoria, is done without pain relief. While it remains legal to carry out this practice,[6] the ADO would support a framework which extends the current requirement in Victoria for pain relief for the procedure,[7] to a requirement for pain relief *for as long as the lamb or sheep is expected to feel pain and/or discomfort*.

2.1 Consistency of the framework - proposing to consider the need for broad exemptions, including the following options:

Option 1: Continue to allow for some broad exemptions where they meet the objectives of the new Act

Option 2: Apply the requirements for the new animal welfare Act to all animals and activities, with appropriate exceptions for lawful activities.

Theme 2: A simplified and flexible legislative framework

It is not clear how the proposals in this part align with, or would achieve, a 'more flexible…approach *to better safeguard animal welfare*' (DP 28). The proposals instead seem designed to achieve a reduction in regulatory requirements for industry and animal users.[8] The DP appears to promote industry-friendly measures rather than greater animal protection, through statements such as:

> A simplified legislative framework would provide greater clarity and support national consistency in animal welfare requirements *to reduce red tape for food and fibre producers*.[9] [emphasis added]

The ADO submits that promoting new laws that benefit animal-use industries is an example of 'regulatory capture', whereby the Agriculture regulator is acting in the interests of the very industries it should be regulating.[10] Any new legislative framework should reflect community values of high animal protection standards and greater industry transparency, rather than industry preferences for relaxed frameworks allowing them to use and exploit animals more easily. The ADO ***does not support*** this approach.

2.1 Consistency of the framework.

The ADO ***does not support*** exemptions in animal welfare laws for activities that cause a sentient animal to suffer and would otherwise constitute an offence of cruelty. Cruelty transcends context. It is

[6] The ADO supports a ban on mulesing on the grounds that it is an extremely painful procedure and the wool industry has had long enough to devise alternatives. Lambs and sheep end up being mutilated by this procedure because these animals are susceptible to diseases by virtue of being in an environment and climate that is not natural for their species. The practice is cheap and is used in a doomed attempt to make the industry sustainable.
[7] POCTA Regulation, reg. 8.
[8] For example, the reference to reducing 'red tape for food and fibre producers' (DP28).
[9] DP 28.
[10] The DP's foreword is written by the Minister for Agriculture, pp 4-5.

not contingent on context. Once it is accepted that animals are sentient, circumstances should not absolve cruelty.

Any act done to an animal should be subject to anti-cruelty laws. It is precisely the exempted activities, given their potential to cause the animal pain and suffering, that should be subject to any new animal welfare law.

For this reason, the ADO ***does not support*** either Option 1 or 2 (DP 30). Rather, the ADO submits that the offence of causing an animal to suffer unnecessarily should apply to all human interactions with other species. Such an approach would constitute a meaningful acknowledgement of sentience, whereas Options 1 and 2 would undermine any such acknowledgement.

The ADO submits that there should be no exemption to the prohibition against causing an animal to suffer for human pleasure or entertainment. Obvious examples of specific practices of this nature that should not be exempted are whipping horses for racing purposes, and using calves or any aged animal in the equivalent of calf-roping events at rodeos.

2.2 Clarity of the framework- proposing to reform the current framework of the Act and its supporting Regulations and Codes of Practice to improve clarity, including the following options:

Option 1: A limited set of Regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.

Option 2: A comprehensive set of Regulations supported by best practice Guidelines (no Codes of Practice

The ADO ***agrees*** with the contention that using codes of practice leads to a regulatory framework that is confusing, inconsistent, and does not achieve the primary goal of protecting animal welfare.

The Directions Paper states that:

> It can also be difficult to enforce minimum mandatory standards set out in non-mandatory Codes of Practice as there are no offences or penalties attached to non-compliance. (p32)

The ADO submits that this statement is inaccurate on the grounds that non-compliance with a code of practice would be an offence of cruelty. This is because codes contain minimum standards, which are usually below those set out in animal welfare legislation. If a person does not comply with a code of practice because the person's conduct is below that required under the code of practice, then such conduct would likely constitute an offence of cruelty and could be enforced in the usual way. If the non-compliance does not, and is not likely to, result in causing an animal to suffer, then there is no requirement for compliance action.

The Directions Paper states that:

> The POCTA Act or Regulations attached to the Act also include very specific requirements for some activities involving animals. These requirements can take considerable time and be difficult to update in response to developments in animal science, new industry practices and technologies. (p32)

Unfortunately, the ADO is unable to comment on this statement as no examples are provided. However, specific requirements are generally better placed in regulations rather than primary

legislation as regulations can be more easily updated while still requiring some parliamentary oversight (albeit reduced).

Regarding the options for this issue, the ADO ***does not support*** Option 1, and ***partly supports*** Option 2.

Option 1: A limited set of Regulations supported by mandatory Codes of Practice that would demonstrate compliance with the Act, complemented by best practice Guidelines.

The ADO ***does not support*** codes of practice if they are developed by industry or animal users. Such codes legitimise practices that would otherwise constitute a cruelty offence due to the pain and suffering inflicted on the animal. If, however, codes are developed by truly independent bodies with an equal or majority representation by animal protection representatives, then codes of practice are a practical way of setting out detailed requirements for protecting animals.

The best practice Guidelines would be an academic exercise (ie serve no practical purpose) as animal users generally go for the cheapest option which is usually not best practice. As they are unenforceable, it is difficult to see what purpose they would serve.

Option 2: A comprehensive set of Regulations supported by best practice Guidelines (no Codes of Practice).

The ADO would generally support best practice being incorporated into legislation. The same caveats as specified for Option 1 would apply ie the burden would be on a person proposing an alternative to show that the alternative would result in equal or higher welfare outcomes (DP 33).

However, if that approach is not adopted, then the ADO ***supports*** Option 2 albeit with strong reservations. The ADO supports a model that does not rely on codes of practice containing minimum standards developed by industry to circumvent proscriptions in animal welfare laws. As mentioned earlier, the ADO also supports specific requirements placed in regulations rather than non-legislative instruments as regulations can be more easily updated while still requiring some parliamentary oversight.

The ADO ***does not support***, however, any part of animal welfare regulations being 'structured by industry or use' (DP 34, 'Option 2'). Again, this is an extreme example of 'regulatory capture', whereby the industry regulator is acting in the interests of the industries it should be regulating to the detriment of the community and animals themselves. The point of animal welfare laws is not to facilitate the use of animals, but to protect them against it. For the same reasons, the ADO also ***does not support*** 'exceptions that apply to … industry' (DP 34, 'Option 2').

2.3 National Codes of Practice, Standards and Guidelines - proposing to introduce a mechanism to incorporate nationally-agreed Standards as mandatory requirements - including the following options:

Option 1: Adopt all agreed national Standards automatically by referencing them in the new animal welfare Act

Option 2: Adopt relevant content from the national Standards into Regulations

In principle, the ADO ***supports*** the standards and guidelines model as an effective way of highlighting mandatory requirements for animal welfare with guidance as to how to achieve them.

However, the ADO submits that 'national consistency in animal welfare requirements' is an illusory goal. While animal welfare continues to be regulated at the State and Territory level, national consistency will not be achieved as there are too many variables amongst the eight jurisdictions.

The National Standards and Guidelines ("NSG") were intended to standardise codes of practice and their legal effect across the jurisdictions. However, as can be seen with the few that have been introduced, the method and process for giving legal effect to the standards differ in each jurisdiction, making it difficult to determine the legal status of the instrument.

For example, the *Australian Animal Welfare Standards and Guidelines for cattle* were endorsed in 2016, but have been dealt with in different ways across the State and Territory jurisdictions. The differences are detailed on the Australian Animal Welfare Standards and Guidelines website (updated Nov 2020).[11] The cattle NSG have variously:

- been incorporated and are mandatory (SA);
- been adopted as non-mandatory guidelines that can be used in evidence (NSW);
- been adopted as a code of practice that can be used as a defence (WA); and
- not been incorporated and are still being reviewed at the local level (ACT, TAS, NT, QLD, VIC).

The situation is similar for the *Australian Animal Welfare Standards and Guidelines for sheep* (also endorsed in 2016).[12]

Of the two options for Proposal 2.3, the ADO ***supports*** Option 2. Being industry-led documents, the NSG contain too many minimum standards that are below the welfare standards set in a progressive jurisdiction such as Victoria. As any new NSG would require reconsideration and adjustment in line with Victoria's regulatory framework, the ADO submits that Option 2 is the better Option.

2.4 The role of co-regulation in the framework – proposing to allow for the recognition of appropriate co-regulatory schemes in the new Act.

The ADO ***does not support*** allowing for co-regulation in new animal welfare legislation as proposed in section 2.4 of the Directions Paper.

The ADO submits that this proposal has several problems.

Firstly, it proposes giving legal effect to documents that are not legislative in nature, that have been drafted by private individuals and industries rather than by experienced legislative drafters, and that are not scrutinised by Parliament.

Secondly, the accreditation programs would be drafted by industry bodies that are inherently conflicted in that they seek to obtain as much financial gain as possible from using animals. This means the accreditation programs could not be trusted to have animals' interests at their core.

[11] http://www.animalwelfarestandards.net.au/cattle/.

[12] http://www.animalwelfarestandards.net.au/sheep/. In WA the sheep standards have not been adopted.

Thirdly, concepts such as 'best practice' are inherently subjective. Industry's concept of 'best practice' will be different from, and no doubt based on a lesser standard of welfare than, an animal protection organisation's concept of 'best practice'. Therefore, claims that an industry's accreditation program is based on 'best practice' animal welfare cannot be relied on as objective. Industry programs are also arguably not reflective of community, or in some cases even scientific, standards. Examples would include industry 'codes of practice' which endorse husbandry practices that would otherwise constitute cruelty under animal welfare laws.

The ADO submits that any minimum legal standards for animals can and should be made in legislation.

2.5 The role of science in the new framework - proposing to formalise a role for scientific knowledge and expert opinion to inform decisions under the new Act, including the following options:

Option 1: Formalise a role for an expert advisory committee by reference in the new Act

Option 2: Include guidance in the new Act on how science and expert opinion should be used to inform decisions under the Act

Option 3: Include guidance in the new Act on how science and expert opinion should be considered in the development of Regulations and Codes of Practice under the Act

The ADO ***supports*** the use of science in informing animal welfare decisions, provided the science is not only verifiably independent—that is, not undertaken or commissioned by government or industry—but also peer reviewed. The ADO would be concerned, however, about how animal welfare science, or the lack of it, is used by industry.

Case study: egg industry

The ADO recently gave evidence at a state parliamentary inquiry into the use of battery cages in the egg industry. To our great consternation we noted that egg industry representatives suggested that science did not address whether hens 'needed' to express natural behaviours and that therefore it did not matter scientifically whether layer hens are allowed to roam or are kept in a cage. Even from a welfarist position this is clearly a very disturbing proposition.

The ADO also notes that the use of science, whilst valuable, only goes so far when determining the values that should inform our society, including how we should treat animals and indeed each other. Most of our criminal laws prohibiting harmful actions are not based on a scientific understanding of the effects of, for example, murdering a human being, but rather are based on moral and philosophical ideals of what we want to be as a society. Science certainly complements this, but should not be an exclusive consideration.

The ADO submits that the three outlined options regarding the use of science and expert opinion have strengths and weaknesses depending on the details of how they are implemented (DP 39).

Option 1 (an expert advisory committee) would arguably have merit only if the representation of animal protection organisations on the committee was equal to or exceeded the combined membership of industry, government, scientific and community representatives.

Options 2 and 3 (guidance in the Act) may be difficult to enforce and may therefore require comprehensive policy guidelines as to how decision-makers should take into account scientific knowledge in relation to animals.

3.1 Monitoring compliance - proposing to enhance powers to proactively monitor compliance

The ADO ***strongly supports*** enhanced powers for enforcement activities regarding animal welfare. In most jurisdictions enforcement agencies such as the RSPCA demand evidence of harm before investigating a matter. This is why their enforcement activity more often than not relates to companion animals rather than intensively farmed animals, where there is far less visibility or potential for gathering evidence. Providing powers for proactive monitoring, such as unscheduled inspections, surveillance, or other activities that would be permitted without requiring 'reasonable suspicion' of non-compliance, would likely increase the detection of animal cruelty in sectors that do not have visibility.

The ADO also notes that the recent increase in animal advocates entering agricultural land to monitor compliance with animal welfare legislation is due to a lack of transparency by industry, and a lack of meaningful compliance action by enforcement agencies. Giving authorised officers more proactive powers to monitor compliance with animal welfare laws would also need to be combined with a requirement that any findings are reported (for example, to Parliament), and preferably made publicly available such as on departmental websites. These measures may go some way to enabling animal welfare legislation actually to prevent cruelty, rather than react to cruelty that has already occurred.

3.2 Permissions and restrictions - proposing to introduce a risk-based framework for permitting restricted activities

In principle, the ADO ***does not support*** a risk-based approach to regulating human interactions with animals.

There are inherent problems with such an approach, including:

- Who would assess whether the risk is low or high—animal users? Industry representatives or promoters? Or an independent body?
- What would be the criteria for making the assessment? How important in the assessment process would the welfare of the individual animal be rather than industry considerations such as costs, time and convenience, or other considerations such as risk to animal *populations* rather than individual animals?
- If an activity is classified as 'no' or 'low' risk, what checks and balances would there be on how the activity is carried out? Would the activity be monitored in any form?

The ADO submits that the only sectors that would benefit from any deregulation of animal industries or activities would be the industries themselves and the administrators of the regulatory scheme. The animals, and those in our community who want a high level of animal care and to have confidence that animals are treated humanely, may inevitably lose out. For this reason, the ADO considers that activities involving animals should require more regulatory oversight, rather than less. This means more monitoring, and more of the checks and balances that are usually part of a licensing scheme.

One of the problems with the proposed approach is that activities that cause significant harm to individual animals could end up being classified as a lower risk activity with reduced compliance requirements.

Case study: kangaroo killing

During the development of the biodiversity conservation legislative reforms in NSW in 2016, various activities were considered for classification as a low-risk activity with reduced compliance requirements. The first activity to be 'risk assessed' as lower risk and therefore no longer requiring a licence was the commercial 'harvesting' of kangaroos. This meant that the government had assessed kangaroo killing as such a low 'welfare' risk that it no longer required a licence. Yet significant welfare risk factors are inherent in kangaroo killing. The commercial 'harvesting' of kangaroos impacts on the welfare of individual animals by killing, injuring, traumatising or orphaning them, and severely depletes kangaroo populations. This should have put commercial kangaroo killing into the highest risk category, but did not. While the requirement for licences was ultimately maintained for the commercial killing of kangaroos, NSW has since removed licensing requirements for non-commercial kangaroo killing,[13] even though the significant welfare risk factors to the individual animals remain the same.

The ADO would ***partly support*** a risk-based framework for permitting certain activities involving animals, only on the grounds that the body tasked with deciding risk levels was truly independent of industry, and that animal protection representatives had equal representation in the body.

Only 'non-interfering' activities such as observing animals in the wild should qualify as 'low risk' activities.

The ADO also submits that breaches of reporting or auditing requirements for a licence, or 'administrative breaches' (DP 43), can be indicative of more significant/lethal non-compliance, so should always be pursued by enforcement agencies.

3.3 Managing seized animals - proposing to set out clear alternatives for managing seized animals

In 2018-19, RSPCA Australia reports that in Victoria, 22,294 animals were seized or otherwise received, including 7,381 dogs, 12,272 cats, 107 horses, 326 livestock and 1,096 other animals. Almost 50% of received animals were rehomed during this period.[14] The report does not indicate the percentage of animals seized due to inspectorate actions.

This section considers the issue of managing animals who are seized under animal welfare legislation and who are not to be returned to the original keeper. If the animals are kept until the completion of legal proceedings, keeping the animals by enforcement agencies can have serious welfare consequences for the animals and incur significant costs.

The Discussion Paper considers options that would enable the animal to leave the shelter or be euthanased before the completion of legal proceedings. However, if animals are to be sold or otherwise disposed of prior to the conclusion of legal proceedings, then it is possible that the animals' keepers would legally contest the decision, resulting in longer time for the animal in a shelter, and a

[13] https://www.dpi.nsw.gov.au/hunting/volunteer-non-commercial-kangaroo-shooting.
[14] RSPCA n.d., *RSPCA Australia National Statistics 2018-2019*, accessed 20/12/20, https://www.rspca.org.au/sites/default/files/RSPCA%20Australia%20Annual%20Statistics%20final%202018-2019.pdf.

greater burden on the system. It is also possible that ultimately seizure of the animal was not warranted ie where the enforcement agency loses a case or does not have enough evidence to lay charges. For these reasons the ADO ***does not support*** disposing of animals before legal proceedings or investigations are complete.

Moreover, there should be a mechanism where people whose animals have been seized, can seek review of that decision. The powers to seize and keep an animal are not subject to sufficient scrutiny under current laws, which is problematic given that the powers enable enforcement agencies to seize and hold animals who are often considered to be family members.

The ADO also ***recommends*** that time limits for investigations be introduced. In NSW, there is a default time limit of 60 days for an inspector to retain a seized animal, after which time the animal must be returned unless proceedings have commenced.[15] This time limitation has been a feature of the NSW law for some time. It was changed from 30 days in November 2005. There are various exceptions to the requirement to return the animal at the end of the 60-day period if proceedings have not been commenced, including if ongoing veterinary treatment is required. This appears to be different from Victoria. The ADO is aware of situations where animals have been seized by RSPCA inspectors in Victoria and held with seemingly open-ended powers to retain possession of animals seized under a warrant. The ADO ***strongly supports*** the introduction of rebuttable limits on the time enforcement agencies can hold seized animals.

Proposed alternatives for managing seized animals

The ADO ***partly supports*** Alternatives A and B. As discussed above, these options would be suitable for implementation after legal proceedings have been completed. Alternative A, in particular, which would presumably involve a version of Alternative B ie permanent transfer of ownership, is desirable from the perspective of defraying the costs incurred by enforcement agencies and shelters in caring for animal victims of cruelty.

However, if the option of selling an animal is only possible once legal proceedings have been finalised,[16] this still leaves the seized animal facing long-term housing in a shelter. Extensive time in shelters may lead to behavioural and psychological issues for the animal, as well as being a drain on the resources of the shelters and enforcement agencies. As such, the ADO suggests that fostering programs for seized animals should be promoted as a way of minimising the harms to animal victims and the costs of sheltering. Fostering programs have a proven record of promoting welfare outcomes for animals, as can be seen in the case of ex-racing greyhounds. Furthermore, as new online services like "Dogshare"[17] and "BorrrowMyPooch"[18] can attest, there is a demand for caring for pets on a temporary basis from those who are unable to commit to keeping a companion animal for the duration of her life. As such, the ADO ***strongly supports*** the development of new fostering programs targeted at providing homes for seized animals during the period leading up to the finalisation of court proceedings.

The ADO ***does not support*** Alternative C. The euthanising of any animals due to an inability to rehome them is unacceptable. Animals who have been seized due to the cruel or neglectful behaviour

[15] POCTAA (NSW) s24J(2).

[16] If the proposal is that animals are to be sold prior to the conclusion of legal proceedings, then we face the same problem as with Option 3. The animals' owners are likely to legally contest the action, resulting in longer time for the animal in a shelter, and greater burden on the system.

[17] https://www.dogshare.com.au/

[18] https://www.borrowmypooch.com.au/

inflicted on them are victims of crime and should be treated with the care, compassion, and respect that we accord to all victims of crime. Furthermore, from the perspective of reducing the time animals are held in shelters, and reducing the costs of that housing, the ADO suggests that euthanasia is likely to be a counterproductive solution. Many animal keepers would contest animal destruction orders, leading to additional legal proceedings. The ADO therefore ***does not support*** Alternative C.

The ADO ***partly supports*** Alternative D. The ADO suggests that this option would not provide an effective solution to the problems outlined in the Directions Paper (p48). As it currently stands, once the decision no longer to house an animal has been made, the next steps taken would need to comply with other legislation, such as the *Wildlife Act 1975*. As such, Alternative D does not appear to provide any additional assistance to seized animals.

Decisions regarding the care of seized animals, who are often the victims of criminal cruelty and neglect, need to be transparent and made by an independent decision maker. The criteria for deciding whether or not to relinquish an animal would need to be clearly set out in guidelines or policy. If made by an administrative decision-maker, the decision should be reviewable. This will ensure that decision-makers can be held accountable. Another option is to require a court order. This would ensure the decision is made by an objective and experienced third party and that all parties should be given the opportunity to present their arguments.

Thank you for taking our submissions into consideration.

Serrin Rutledge-Prior, Farnham Seyedi, Tara Ward

Animal Defenders Office
GPO Box 2259, Canberra ACT 2601
contact@ado.org.au | www.ado.org.au
ABN: 12 837 355 070 | Member: CLCNSW Inc. and CLC Australia Inc.

The Animal Defenders Office acknowledges the traditional owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

21 December 2020