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Dear Sir/Madam

Submission on the Draft Animal Welfare & Management Strategy 2017–2022

1. Thank you for the opportunity to provide a submission on the draft *Animal Welfare & Management Strategy 2017-2022* (the strategy).
2. This submission is divided into two parts. Part 1 addresses the aspects of the strategy with which the Animal Defenders Office (ADO) agrees. Part 2 addresses the aspects of the strategy that the ADO submits could be improved.

About the Animal Defenders Office

3. The ADO is a non-profit, community law practice that specialises in animal law. The ADO offers information and representation for individuals and groups wishing to take action for animals. The ADO also produces information to raise community awareness about animal protection issues, and works to advance animal interests through law reform.
4. The ADO is based in the ACT and is a member of the National Association of Community Legal Centres.

Part 1—Commendable aspects of the strategy

5. The ADO supports many of the proposed outcomes and actions in the strategy. Examples of those matters are dealt with below.

Promoting animal welfare

6. The ADO commends the ACT Government for committing, through the strategy, to promoting animal welfare. The ADO strongly supports the strategy's vision that 'the ACT become an Australian leader in animal welfare and management practice' (p. 15).
7. The ADO commends the strategy for addressing the physical and mental wellbeing of animals and aspects of naturalness (p. 10).

Acknowledging animals' sentience

8. The ADO applauds the strategy's recognition that animals are sentient beings who have the ability to experience a range of sensations and emotions including pain, fear and joy (p. 5). This acknowledgment reflects what empirical evidence has told us since Charles Darwin published *The Descent of Man, and Selection in Relation to Sex* in 1871.

Moving beyond the 'five freedoms'

9. The ADO commends the strategy for moving beyond the 'five freedoms' and acknowledging that contemporary animal welfare practice should focus on providing animals with a life worth living.
10. The 'five freedoms' concept dates back to the 1960s when intensive factory farming was becoming widespread. The ADO notes a recent critique of the 'five freedoms' concept in Australian media: 'Call to update animal welfare codes after neuroscience proves animals experience a wide range of emotions',¹ in which a 'leading animal welfare professor' said:

We've moved from a primary focus on the nutrition, environment and health of the animals, which I see as the survival critical stuff. But our ideas have evolved, so if we want our animals to thrive not just survive, they have to have pleasant experiences. [In developing the five freedoms] the focus was on neutralising negative experiences of pain and hunger. But we now understand that if you get them as close to neutral as possible, it gives them relatively neutral welfare. And for animals to have good welfare they really need to be able to engage in rewarding behaviours.

Knowledge gaps and areas for improvement

11. The ADO welcomes the strategy's proposed deliverable of 'undertaking a review of the current compliance and enforcement regime to identify gaps and areas for improvement' (action 5.1.1 of the strategy, p. 34).
12. The ADO submits that knowledge of and research into outcomes of animal cruelty prosecutions is a high priority. Currently, most animal cruelty prosecutions occur in the lower courts and are unreported. It is therefore difficult to evaluate how animal cruelty laws and policies are being enforced, both by enforcement agencies and the courts. Consequently, it is difficult to assess what improvements to the compliance framework should be made and whether additional tools and measures are required (such as new offences, higher penalties, register of animal bans etc).
13. However, in relation to animal cruelty prosecutions that are reported in the media, the ADO regularly receives complaints from members of the public

¹ <http://www.abc.net.au/news/2016-11-02/nrn-updating-animal-welfare/7987266>.

about the inadequacy of the penalties imposed on the perpetrators of animal cruelty. This suggests the penalties for animal cruelty offences in the *Animal Welfare Act 1992* (ACT)² and the *Crimes Act 1900* (ACT)³ do not reflect community values and consideration should be given to increasing them.⁴

Minimum qualification requirements for pet services

14. The ADO strongly supports proposed action 2.1.4 'Investigating options to introduce minimum qualification requirements for pet services, including grooming services' (p. 21).
15. The ADO notes that the lack of qualification requirements can lead to extremely negative welfare outcomes for animals. For example, in 2013 a pet grooming service caused third degree burns to dogs by keeping them too close to blow dryers.⁵
16. The ADO submits that qualifications should be required for anyone working in the pet services industry to ensure the highest standards of animal welfare are achieved and incidents like that described above never occur again.

Review of prohibited exotic animals list

17. The ADO supports the proposed action in 4.6.2 'Review the prohibited exotic animals list for animals used for entertainment and display under the *Animal Welfare Act 1992*' (p. 30).
18. The ADO notes significant animal welfare concerns arise from using animals for entertainment and display purposes. For example, animals are often denied the ability to display their normal behaviours and placed under significant stress because of the cramped conditions in which they invariably are kept. Further, animals used for entertainment are often physically coerced into performing actions that are unnatural to them and are physically punished if they do not perform.
19. The ADO supports any review that results in the expansion of the meaning of "prohibited animal" in Part 5 of the *Animal Welfare Act 1992*.

Educating the public about animal welfare matters

20. The ADO commends actions 2.1.1 to 2.1.4 (p. 21) because education is one of the main ways to achieve better animal welfare outcomes. A lack of

² For example, see sections 7 and 7A.

³ For example, see section 385.

⁴ See our website for further information about penalties for animal cruelty and neglect in Australia: <https://www.ado.org.au/penalties-for-animal-cruelty-and-neg>.

⁵ See <http://www.canberratimes.com.au/act-news/dogs-left-with-thirddegree-burns-after-visits-to-groomer-20131101-2wrmm.html>.

knowledge about animals' capacity to suffer is a reason why animals are subjected to horrific suffering at the hands of humans.

Part 2 – Aspects of the strategy that could be improved

21. The ADO believes the strategy could be improved in the following ways.

Review of Animal Welfare Act 1992

22. Proposed action 1.3.4 states that a legislative review of the *Animal Welfare Act 1992* will be conducted every five years (p. 19). The ADO submits that this is too infrequent.
23. The strategy acknowledges that the ACT government aims to become an Australian leader in animal welfare and management practice by having contemporary animal welfare and management laws (p. 15). A review of the *Animal Welfare Act 1992* every five years is inconsistent with the idea of having 'contemporary' and nation-leading animal welfare and management laws.
24. A more frequent review period would also help achieve proposed outcome 1.1 which is for ACT laws to enable a proactive approach to animal welfare and management and the humane and ethical treatment of animals.
25. The ADO further submits that any review of the *Animal Welfare Act 1992* should provide a meaningful opportunity for key stakeholders to contribute to the review. Key stakeholders would include the Animal Welfare Advisory Committee, and an appropriate range of animal protection organisations.
26. The ADO recommends proposed action 1.3.4 be amended to commit to a review of the *Animal Welfare Act 1992* at a minimum of every two years.

Review of Codes of Practice

27. Action 1.2.1 commits to a review of animal welfare and management regulations and codes of practice in the ACT within 12 months (p. 18). The ADO notes that the last code of practice developed in the ACT was approved in 2013.⁶ It is therefore imperative that a review of codes of practice in the ACT does not hinder the development and implementation of new codes of practice, given the current glacial pace of improvement. We submit that action 1.2.1 also commit to implement one or more new codes of practice within a similar timeframe as the review.

⁶ The *Code of Practice for the Sale of Animals in the ACT (Other than Stock and Commercial Scale Poultry)*, 21 October 2013.

Management of poultry

28. Regarding proposed action 4.7.3 'Continue to manage poultry in accordance with relevant ACT codes of practice' (p. 30), the ADO notes there is currently no code of practice in the ACT that deals with destocking and transporting commercial poultry.
29. The ADO submits that proposed action 4.7.3 be amended to commit to filling this gap as a matter of urgency.

Developing and implementing plans for controlled native species

30. The ADO submits that proposed action 4.3.1 'Develop and implement management plans for controlled native species under the *Nature Conservation Act 2014*' (p. 29), be expanded to ensure that there is a rigorous consultation process in place before a species is declared to be a controlled native species.
31. The ADO notes this did not occur for the Eastern Grey Kangaroo.⁷ This resulted in a lack of transparency and accountability in the government decision making process regarding what is a matter of significant public interest (the treatment of our iconic native wild animals).

Responsible pet ownership

32. Objective 5 relates to compliance and enforcement of animal welfare and management issues (p. 33).
33. The ADO notes that certain vulnerable members of our community (such as those who are homeless, victims of family violence, Indigenous people, public housing tenants etc) may have difficulties meeting legislative standards. The ADO submits that the strategy should acknowledge this issue and commit to assisting these people to comply with their legislative obligations.

'Evidence-based' best practice principles

34. Objective 4 of the strategy aims to ensure that 'where animals are managed for social, economic and environmental purposes, this happens in accordance with best practice' (p. 26). The strategy explains the concept of 'best practice' as 'informed by evidence and includes a range of sources, for example...advice from recognised experts and professionals, advances in scientific research and community expectations' (p. 11).
35. The ADO submits that this objective will be meaningful only if the community has confidence in the 'evidence' on which these best practice principles are based. The ADO submits that any 'evidence' relied on for the management of

⁷ *Nature Conservation (Controlled Native Species – Eastern Grey Kangaroo) Declaration 2017.*

animals must be completely independent and peer-reviewed. This means evidence must not be commissioned by, funded, or in any way connected to, animal industries.

36. Too often, animal welfare research and reviews are conducted by industries that use animals for profit. This leads to a lack of confidence in the research by the community, and calls into question whether animal welfare legislation and policies that rely on such research have gained a broad social licence.
37. The ADO submits that the outcomes in objective 4 that refer to animals being 'managed in a humane and ethical manner' be amended to refer to independent, peer-reviewed evidence. For example, outcome 4.2 could be amended to state that 'Populations of pest species are managed in a humane and ethical manner. Independent, peer reviewed evidence will be used to determine what constitutes humane and ethical treatment.'

Humane and ethical management of native species

38. Proposed outcome 4.3 of the strategy (which relates to objective 4 above) is that 'populations of native species are managed in a humane and ethical manner' (p. 27).
39. The ADO welcomes this approach to human interaction with species of wild animals. We look forward to a time when the ACT prioritises animal welfare and adopts non-lethal methods as the preferred and long term management response regarding native animals. The ADO holds strong ethical concerns about current lethal and often inhumane measures to 'control' local wild animal species such as the Eastern Grey Kangaroo. It is unethical to adopt a method of control that involves killing healthy indigenous animals, and in a way that can inflict considerable pain and suffering on individuals and the broader social groups to which those individuals belong. Non-lethal management measures are objectively more humane than killing individual animals in traumatic circumstances—both for the victim and those left behind (including other members of the same mob and the victim's dependent offspring). The ongoing adoption of lethal control measures prioritises 'cost-effectiveness' over ethical and animal welfare considerations.
40. The ADO recommends that the strategy prioritise research into non-lethal solutions, such as fencing and road overpasses and underpasses, for the management of native animals in the ACT where it is proven, based on independent and peer-reviewed research, that such management is absolutely necessary in the best interests of the native animal species.

Compliance and enforcement

41. Objective 5 of the strategy confirms the ACT Government's recognition of 'the importance of a comprehensive compliance and enforcement framework to support animal welfare and management laws' (p. 33).

42. Given the importance of this objective, the ADO recommends that its outcomes be strengthened. A reasonable outcome would be that the compliance and enforcement regime in the ACT meet community expectations, and appropriate action is undertaken and appropriate penalties are applied when animal welfare standards are not met.
43. Currently the RSPCA, a private charity, bears most of the animal welfare enforcement burden. In 2014 only 3 per cent of the RSPCA's national funding was provided by government.⁸ Nationally the RSPCA employs approximately 100 inspectors to cover all cruelty complaints.⁹
44. The ADO notes the comments in the strategy by the Minister for Transport and City Services, Meegan Fitzharris, that 'the ACT has a good track record in promoting outcomes for animals in the ACT and this provides a strong foundation for the ACT to become an Australian leader in animal welfare and management practice' (p. 3).
45. The ADO strongly recommends that the strategy commit to investigating the viability of an independent office of animal welfare in the ACT. Such an office would have responsibility for shaping animal welfare policy, making decisions that are in the best interests of animals, and enforcing animal welfare laws. Until this occurs, it is difficult for the community to have confidence in how animal welfare laws are monitored and enforced. The ADO submits that the only way objective 5 can be effectively achieved is by creating such a body.
46. To be truly independent, an office of animal welfare should not be associated with government departments or agencies that have clear conflicts of interest, such as those established to promote animal industries or recreational animal use and killing.
47. Establishment of such a body would be largely consistent with recommendation 5.1 of the Productivity Commission's report into the *Regulation of Australian Agriculture*.¹⁰ The Productivity Commission recommended that a stand-alone statutory organisation with responsibility for developing animal welfare standards and guidelines—the Australian Commission for Animal Welfare—be established at the Federal level.

⁸ Deborah Cao, *Animal Law in Australia* (Thomson Reuters, 2nd ed, 2015), 228.

⁹ *Ibid.*

¹⁰ Productivity Commission Inquiry Report, *Regulation of Australian Agriculture*, No.79, 15 November 2016, pg 238 <http://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf>.

48. The ADO therefore submits that objective 5 be amended to include an outcome that an independent office of animal welfare be established in the ACT.

Conclusion

49. The ADO commends the ACT government on the strategy and the many positive features it contains. The ADO believes the strategy could be improved by adopting the recommendations in this submission.

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